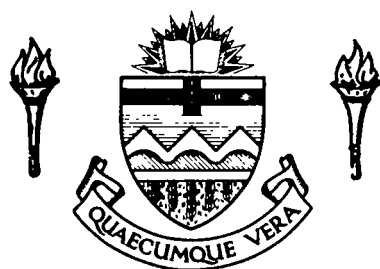


THE SEPARATE SCHOOL QUESTION IN CANADA ★ WEIR

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THE
SEPARATE SCHOOL
QUESTION IN
CANADA

BY
GEORGE M. WEIR

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Education, University of British Columbia*

Author of

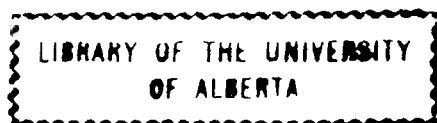
SEPARATE SCHOOL LAW IN THE PRAIRIE PROVINCES,
SURVEY OF NURSING EDUCATION IN CANADA;

Joint author of

SURVEY OF THE BRITISH COLUMBIA SCHOOL SYSTEM.

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FOREWORD

THE greater part of Canada's educational history is yet to be written. Workers in this field have been few and their output, while commendable in execution, has been disappointingly narrow in scope. In view of Canada's youth, however, it is perhaps not surprising that the gaps in her educational record should be so numerous.

Moreover, while it is important that these gaps should be bridged as soon as possible, it seems equally desirable that a comprehensive History of Canadian Education, interpreted from a national rather than provincial or parochial standpoint, should be written. Indeed there is a very real need in Canada at the present time for such a perspective as a national history of education might reasonably be expected to provide. For it is obvious to students of current educational problems that a comprehensive statement of our experiences in this field would be of no small significance for Canada and, in certain respects—such as the treatment of religious minorities—for all democratic communities. Influences that have caused the present widespread social unrest will probably also create new and perplexing educational situations that may demand a radical re-examination of the basic structures of our solid-looking, highly centralized school systems; and in this process of analysis and evaluation we shall be greatly handicapped unless we approach our problems with the discerning knowledge that may be obtained only from accurate and representative sources of information. For Canada's school problems have been peculiarly her own.

The pioneer epoch in Canada's educational growth—an epoch noted for its methods of improvisation in the attempted solution of our separate school and bilingual problems—seems definitely to be drawing to a close. Sooner or later these improvisation procedures will have to give place to a plastic tradition and more tolerant thinking, if genuinely cultural motives in our national development are to receive freer scope.

The case for a comprehensive History of Canadian Education has been stated above rather than proved. Nor does the present book profess even remotely to meet the requirements of such a history. It also, like the great majority of its predecessors, is primarily concerned with bridging gaps in the educational record. Its chief aim is to fill in certain important omissions concerning Canada's separate school and bilingual issues. These thorny questions have an interesting academic, legal and social background. Their historical significance also can scarcely be overestimated. The importance of the subject, therefore, and the need felt by schoolmen and others for its impartial presentation, must serve as the justification for writing this book.

Matters of a controversial nature are discussed in the following pages. The subject itself bristles with controversial issues. Any discussion, however impartial it aims to be, must necessarily place these issues in the foreground. Concerning many of the questions raised in this book, it can scarcely be assumed that Orangemen, for instance, will see eye to eye with Knights of Columbus, or that English-speaking and French-speaking Canadians will generally hold harmonious views; while all the above groups will doubtless disagree with many of the writer's

conclusions. On questions of fact, however, themselves of first-rate importance, mere opinion or prejudice can make but little impact. If the record of fact is impartially presented, the writer has discharged his first obligation. Like the reader, he is entitled to place his own interpretation on this record. Moreover, in the bewildering maze of educational, racial and legal questions involved in the discussion of Canada's separate school and language difficulties, the occasions for faulty deductions and erroneous conclusions have been many, and the writer makes no claim to infallibility of judgment.

The present book, it is hoped, will be of interest to the laity as well as to schoolmen and administrative officials. For nearly a century separate school and sectarian issues have operated as divisive influences in our national life. Some of our most acrimonious election campaigns have been fought over these issues. Orangemen, Knights of Columbus, Protestant and Roman Catholic clergy, statesmen and politicians, trustees of schools and members of various political, fraternal, denominational and other organizations constituting a large portion of the Canadian electorate, have participated in these campaigns, which occasionally seemed almost indistinguishable from political *melées*. On the whole, however, sanity and the counsels of wise leadership have prevailed. To the above generation of Canadians—many of whom still survive—as well as to those who have more recently assumed the responsibilities of citizenship, the problems discussed in the following pages should prove illuminating.

In deference to the above type of audience the author has endeavoured to make his treatment of the subject as authoritative as possible. To be authorita-

tive, the record must be based largely upon documentary evidence. Otherwise the implications of a subject, inherently controversial and involved, might easily be made misleading as well. The writer, therefore, makes no apology for basing this study chiefly on Hansard reports, legal decisions, orders-in-council, sessional papers, statutes, contemporary press reports and other primary sources of information.

For helpful suggestions for the improvement of the manuscript the writer is indebted to his wife and to his former teacher, Dr. H. T. J. Coleman, Head of the Department of Philosophy in the University of British Columbia. The index was prepared by Dr. George F. Davidson to whom the writer makes grateful acknowledgment.

G. M. WEIR.

THE UNIVERSITY OF BRITISH COLUMBIA,
May, 1933:

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The Separate School Question in Canada

CHAPTER I

THE EUROPEAN AND CANADIAN BACKGROUND

SINCE the struggle for responsible government in Canada, reaching its climax in the Metcalfe Crisis and the famous Rebellion Losses Bill of 1849, no public question has caused more bitter controversy or engendered deeper feelings of animosity than the so-called Separate School Question. When it is remembered that the population of Canada is, in the main, composed of two racial groups, corresponding roughly to the two great branches of the Christian faith, one can readily understand why racial and religious considerations should have been important factors in determining the fundamental School Law (Section 93, British North America Act)¹ of the Dominion. Nor is it remarkable that this law should have embodied what was little more than a compromise.² At the same time there is considerable evidence to show that the overwhelmingly Roman Catholic Province of Quebec has been singularly free from sectarian strife in the operation of its school system.

¹ The British North America Act will be referred to hereafter as the B.N.A. Act.

² On the second reading of the B.N.A. Bill in the Imperial Parliament, February 19th, 1867, Lord Carnarvon, who was fathering the measure, spoke as follows in reference to Section 93: "This clause has been framed after long and anxious controversy, in which all parties have been represented, and on conditions to which all have given their consent . . . but I am bound to add as the expression of my own opinion that the terms of the agreement appear to me to be equitable and judicious."

While it is generally admitted that the true function of the common or public school is to train for living on "progressively higher levels of citizenship," the question of the means to be adopted for such training—whether, for instance, the instruction imparted shall be of a secular nature only, or religious or sectarian as well as secular—has, as already intimated, proved to be a subject of unremitting and, in Canada at least, of acrimonious discussion. People do not ordinarily reason impartially about matters that primarily involve conviction and emotion. Religion and language are such matters. The position taken by allegedly fair-minded advocates of the secular, state-supported school in Canada is that instruction in the fundamental ethical or moral principles, sanctioned by all religious sects, should be given in the public school. But here the line is sharply drawn to exclude all teaching of a denominational character.

When the respective spheres of church, home and state have been satisfactorily defined and agreed upon, the separate school problem, as well as that of biblical and religious instruction in public schools, may cease to exist. And if present conditions in Canada be any criterion, there is little prospect of such a happy agreement being reached before the dawn of the millennium. Even in those countries that can boast of national school systems, elements of separatism exist beyond state control. In the United States, for example, it is reported that nearly 750,000 children attend schools of a private and denominational character.¹

Whether or not separate schools be a desirable part

¹ For a statement of the parochial school situation in the United States, see Chapter Two.

of our educational systems, when once constitutionally established, they cannot, according to the weight of competent opinion, be legally abolished by any Canadian authority. Only through an amendment by the Imperial Parliament to Section 93 of the B.N.A. Act could the power of abolition be conferred upon either the Federal or a Provincial Government; and only at the practically unanimous request of both Houses of the Federal Parliament would there be any likelihood of such Imperial intervention. In fact, Canada's legally constituted dual school system, in the several Provinces where such exists, possesses every element of a comparatively permanent institution, and the more fully Canadians grasp this fact the better will it be for the harmony of their national life.

At this point brief reference to the European background of the separate school situation in Canada should be made. From the early years of the Christian era in Europe, and especially from the time when the Popes of Rome were gaining more and more a position of prominence and power in the political as well as in the religious life of the East, it had been the unswerving policy of the Roman Church, the Schoolmistress of Mediaeval Europe, to extend and safeguard its interests by the control of education. There was, in fact, no institution but the Church that was sufficiently organized or enlightened to carry on the work of education, which, as in the case of the monastic and cathedral schools, was inseparable from sectarian instruction.

Elementary education, as at present organized, was unknown in the Middle Ages and appeared in embryonic form only after the Protestant Reformation in the sixteenth century. The institutions in the Middle Ages that most closely resembled the modern

secular school, as the latter is found in Europe and America, were the Gild, Burgher and Chantry Schools which frequently became combined within a town as one organization. The burgher schools were generally taught by priests, although largely controlled and supported by the public authorities. These schools also adopted a more practical curriculum than that of their predecessors and came to represent the interests of the artisan and merchant classes. Nevertheless, they were still inspected by the clergy, while the Church made every effort to bring them under her control. Despite ecclesiastical opposition the number of lay teachers in burgher schools gradually increased and thus helped to pave the way for the secularization of education that took place largely through the influence of Luther.

It is unnecessary to enlarge upon the educational activities of Martin Luther. His plan of salvation, justification by faith, involved a very close and vital relationship between the individual and his Creator. No intermediary could exempt the individual from personal responsibility for his own salvation. As the plan of salvation was contained in the bible, it therefore, in Luther's judgment, became necessary that every one should be taught to read. This doctrine obviously involved compulsory education, which could be enforced only by the state. In the logic of events the State also became responsible for the financial support of education which, Luther insisted, involved the welfare of the State quite as much as that of the Church. Luther's Letter to the Mayors and Aldermen of All Cities of Germany in behalf of Christian Schools contains the following sentences:

Though there were no soul, nor heaven, nor hell, but only the civil government, would not this require good

schools and learned men more than do our spiritual interests? . . . For the establishment of the best schools everywhere, both for boys and girls, it is a sufficient consideration that society, for the maintenance of civil order and the proper regulation of the household, needs accomplished and well-trained men and women.

The aim of Jesuit education, which left a deep and lasting impression on the life of early Canada and still exerts a powerful influence on the religious and educational life of the Dominion, was of a dual nature: missionary, and educative. Through their missionary activities, the Jesuits sought to combat Protestant heresies and to win back Protestant territory to Papal allegiance. Through their schools they sought to hold their converts and to counteract Protestant education by the provision of as good or better Jesuit facilities.

Hence it was inevitable that the early French settlers in Canada should have harboured the idea that only a system of clerical schools was orthodox or expedient. They knew no other system. The priests and nuns were also teachers. Lay instructors had not yet entered the field of public education. Even to-day¹ nearly fifty per cent. of the teachers in Roman Catholic schools in Quebec and over forty per cent. of the teachers in all classes of schools in that Province are classed as "religious teachers" or as members of "religious orders." Out of a total of 8,864 religious teachers in 1931, only five were not engaged in Roman Catholic schools.

Moreover, the permanence of their nationality, language and religion was believed by the French to depend largely on clerical control of education. Especially after the Revolutionary War, followed in

¹ See *Report of the Bureau of Statistics, 1931*, page 77.

the United States by the refusal of official recognition to the French language and by the withholding of separate school privileges, were the "godless" schools of the Americans held up as an example to be shunned. Even before the English colonies in America declared their independence, the French of Canada had realized that, both on racial and religious grounds, their highest destiny lay within the British Empire, where their separate school and language privileges would not be molested. The answer to Montgomery at Montreal in 1776 was emphatic proof of the French attitude of mind.

However, as the English population in Canada, the bulk of which was Protestant, increased, it was only natural that lines of cleavage in the control of education should develop and that elements of separatism in matters of educational theory and practice should become more pronounced. The secularization of education in Canada—still less than half complete in Quebec—and state support of the common school were not introduced without considerable friction and many elements of compromise.

A matter that has proved the subject of much bitter controversy, especially in Ontario and the Prairie Provinces, is the language or so-called bilingual question. While closely allied to religious instruction in schools, the use of any particular language is not, according to authoritative judicial decision, a distinctly legal phase of the separate school problem. This matter is more fully discussed in Chapters Nine and Eleven. According to the ruling of the Judicial Committee of the Privy Council, a provincial legislature is competent to determine what shall be the official language in any school, public or separate, so long as the distinctly denominational character of the

separate school is not thereby prejudiced. Otherwise, it might be argued that as good a case could, from the standpoint of denominational or religious instruction, be made out for Latin as, for instance, the French language.

Students of Canadian history are well aware, however, that, with the exception of the seven years from 1841 to 1848, French has always been on a par with English as an official language in the Federal Parliament. The official status of French was fully guaranteed as early as 1774, when the Quebec Act was passed. Therefore, it is scarcely correct to designate French as a "foreign" language in Canada. For more than two centuries before the capture of Quebec, French was the language of civilized communication in the territory which later became known as Lower Canada. It would appear, however, in the light of judicial decisions discussed in subsequent chapters, that the claim of French to preferred recognition in the schools of the provinces, other than Quebec, in comparison with German or any other language, must rest on an historic, and perhaps a moral, rather than on a legal basis. Does the fact that French is an official language in the Federal Parliament and that its free use in the conquered territory was fully guaranteed by the Imperial Parliament as early as 1774 place the provincial legislatures under any moral obligation to grant this language special recognition, if not to place it on a par with English, in the state-supported common school? Recent legislation in Ontario and Saskatchewan, discussed in subsequent chapters, indicates the answer to this question.¹

Moreover, advocates of bilingualism, both in

¹ See also Appendix III.

Ontario and the Prairie Provinces, maintain that the end of religious instruction is largely defeated unless such instruction is imparted through the medium of the pupil's mother tongue. A French Roman Catholic student, a graduate of Osgoode Hall, who attended the Provincial Normal School in a prairie city, summed up the matter in the following words:

If you take away our language, you take away our faith; two per cent. of our people may go with the Irish, two per cent. go with the Protestants, and ninety-six per cent. go to the Devil.

A large section of the electorate, on the other hand, who oppose bilingualism in state-supported schools, insist that there is no disposition to "take away" the French or any other non-English language. They maintain that, outside of the Province of Quebec, English alone is the official language of the schools as well as of business intercourse. Hence they insist that all pupils, on leaving the public or elementary school, should be able to speak, read and write English with a fair degree of efficiency. The words of Sir Wilfrid Laurier, spoken in the House of Commons, May 10, 1916, with reference to the Lapointe Resolution, are quoted by them approvingly. "No man on this continent," said Sir Wilfrid, "is equipped for the battle of life unless he knows English. This I know from personal experience." Hence the ground for dispute, particularly in Ontario, Manitoba and Saskatchewan: Can an adequate knowledge of the English language be attained if bilingual conditions in state-supported schools are permitted? This matter is discussed in Chapters Five, Nine and Ten.

Before entering upon a somewhat detailed discussion of the legal and constitutional phases of

separate school and bilingual problems, reference should be made to the historical background, involving English and French relations and the main political events preceding Confederation, of Section 93 of the British North America Act.

If the rebellion of 1837-1838 resulted in no other good, it at least aroused the Imperial mind to a sense of the gravity of the Canadian situation, and hence immediate steps were taken to meet the need for reform. Lord Durham was sent out from England, and in his capacity of High Commissioner and "Governor-General of all the said Provinces on the Continent of North America" was vested with wellnigh plenary authority to restore order and good government in the Canadas. Certain passages from his famous Report, the keynote of which was union and responsible government, shed interesting sidelights on the English estimate of the French race—an estimate still held in certain quarters. While the prime source of the trouble was racial hatred, which time alone would remove, the imminent need for social and political reform could not, with safety, be disregarded. "They remain an old and stationary society in a new and progressive world," sums up Durham's verdict; and again, "It is to elevate them from this inferiority that I desire to give to the Canadians our English character." Kindly, frugal, honest, industrious, and courteous he admitted them to be, yet they were alleged to cling to "ancient prejudices, ancient customs and ancient laws, not from any strong sense of their beneficial effects, but with the unreasoning tenacity of an uneducated and unprogressive people."

Durham's quasi-coercive policy, whereby the French were to be fitted into the fabric of the national

structure like a brick in a wall, lay at the basis of his argument for legislative union. Had this non-British policy been capable of fulfilment, racial and separate school questions might have vanished; yet Durham's argument was fundamentally unsound, as arguments advocating coercion usually are. By the legislative union of the two Canadas the English would forthwith have a voting majority in parliament and in the country, which, Durham anticipated, would be annually increased as a result of English immigration. Under these conditions he predicted that the French, "when once placed, by the legitimate course of events and the working of natural causes, in a minority, would abandon their vain hopes of nationality." The English in Ontario to-day must realize the futility of Durham's utopian dream. Sectionalism, not unity or the extinction of French nationality, would be the inevitable result of such a system. And this is just what happened. As Lord Elgin later pointed out, the problem of how to govern United Canada would be solved if the French split up into two political groups and joined the corresponding English parties. A "solid Quebec," viewed in the light of the veiled threats of the Durham Report, may originally have been inspired by the interest of self-preservation.

The Act of Union, which was professedly based on the recommendations of Lord Durham, was but the prelude to the great conflict for responsible government. For the first and only time in the history of the Canadian Parliament the French language was proscribed, and English was declared by the Act to be the sole official language in both chambers. After considerable agitation, and owing largely to the influence of Lord Elgin, this clause was repealed

in 1848, when French was restored to its original status.

The period from 1850 to 1867 was characterized by dual ministries, double majorities, "rep. by pop." agitations, and political deadlocks, until matters reached so critical a stage that a reconstruction of the constitution became urgent, and preliminary steps were taken at Charlottetown, Quebec, and London to inaugurate a new and more glorious era in the consolidation and development of British North America. Not the least important of the momentous problems taxing the wisdom of the Fathers of Confederation was the issue of separate schools.

In concluding this chapter, reference should be made to the special constitutional background of the separate school situation in the Prairie Provinces. These Provinces were not left free to work out their educational destiny in their own way, but were obliged to conform to certain Federal statutes, in the nature of constitutions for the newly-created Provinces, containing educational clauses calculated to protect the rights and privileges of denominational minorities. These clauses, in turn, were a modification of Section 93 of the British North America Act, 1867, and were alleged to derive their validity both from this Section and from Section 2 of the British North America Act, 1871. Thus it was anticipated that, by means of these constitutional safeguards, imposed by the Federal Parliament, the educational rights and privileges of religious minorities, enjoyed "by law" prior to Confederation or granted by the Province after the date of union, would be protected from invasion by any acts of the provincial legislatures. In addition to this federal legacy, which evoked a storm of bitter

controversy, especially in the elections of 1905 in Saskatchewan and Alberta, it might be added that racial and religious prejudices, inherited from the East and fostered under Western conditions, have tended to obstruct any clear perspective of the purely legal phases of Western Canada's separate school and bilingual issues.

CHAPTER II

A GLIMPSE OF THE SEPARATE AND PRIVATE SCHOOL SITUATION IN CANADA TO-DAY

THERE is a widespread impression, especially among the laity, that so-called "separate" schools mean Protestant schools in Quebec and Roman Catholic schools in Ontario, Saskatchewan and Alberta. Such an impression, however, should be considerably qualified. In the first place there are, in a strict sense, no separate schools in Quebec¹ (see Subsection 2, Section 93, B.N.A. Act), but rather "dissentient" schools, or schools of the denominational minority, which, in the case of Protestant dissentient schools, are more secular in character than those of the Roman Catholic majority. In a numerical sense also, the Catholic denominational schools of Quebec correspond to the national or public schools of Ontario and the other Provinces.

In a general way the term "separate schools" is used interchangeably with "denominational schools" or schools of the "Protestant or Roman Catholic minority." The implication of these terms suggests that biblical or sectarian or religious instruction, in conformity with the tenets of the denominational minority establishing such schools, is imparted to the pupils enrolled. There are, however, a small number of Protestant separate schools in Ontario, Saskatchewan and Alberta (about a dozen in all) in districts where the majority of ratepayers are Roman Catholic. In such cases Roman Catholic ratepayers are supporters of the public school which, indeed, may be, and generally is, more denominational in character

¹ See, however, Chapter Twelve *re* the Hirsch Case.

than the Protestant separate school. In view of the above conditions it is scarcely correct to say that separate schools are denominational while the public school is secular. In fact, in districts where Protestant separate schools exist, the converse is largely the case. In a strict sense it is more accurate to speak of separate schools as dissentient schools, that are established by the denominational minority, Roman Catholic or Protestant, in cases where the minority prefer to support such schools rather than to patronize the public school.

Moreover, outside of the Province of Quebec, the first school established under provincial authority in any township, city, town or village is the public school. The denominational minority in Ontario, Saskatchewan or Alberta may then apply for the establishment of a separate school within the same area as the public school district and, in such case, the minority is liable to payment only of the taxes it imposes upon itself for the support of the separate school. In addition, the separate school receives provincial financial assistance on the same basis as that governing the distribution of government grants to public schools.

In the latter respect the separate school probably differs most from the private school, which, outside of Quebec, does not receive any financial aid from the government and is not subject to provincial supervision or inspection. Furthermore, the private school, while it may be quite as efficient as the public or separate school, is not ordinarily subject to the regulations of provincial departments of education in such matters as the content of the curriculum or the training and certification of teachers. While, under Section 93 of the B.N.A. Act, any Province is com-

petent to control its private schools, it has not, so far, been customary for the provincial authorities to exercise their jurisdiction in this respect. Government inspection and regulation also suggest government financial assistance, which the Provinces are naturally quite willing to avoid so long as the private schools are reasonably efficient.

In addition, the Separate Schools Act of Ontario¹ also provides, under certain conditions, for the establishment of separate schools for "coloured people." In such cases the segregation of pupils takes place on a "colour" rather than on a sectarian basis. With the above exception, however, all separate schools in Ontario, Saskatchewan and Alberta must be either Protestant or Roman Catholic.

It should also be observed that separate schools are, with a few exceptions in Alberta, supposed to be limited to the elementary or common school grades. Even in Ontario, however, certain separate schools conduct "fifth classes" which, in a general way, correspond to the first year in high school. Protestant or dissentient schools in Quebec include the high school grades. Furthermore, it appears quite natural that the Roman Catholic minority in Ontario, Saskatchewan and Alberta should, in accordance with their views on the meaning of true education, seek to extend separate school "rights and privileges" upwards into the high school levels; in other words, to place the high, as well as the elementary, school within the class known as "separate schools." The great majority of devout Roman Catholics have always objected to the so-called "Godless" or neutral school. The common school, it is alleged, should also include

¹ Revised Statutes of Ontario (R.S.O.), 1927, Cap. 328, Part 1, Section 2.

religious education, which is considered indispensable to the training of the whole personality. The "Godless" school, it is further maintained, may develop an intellectually "keen" product while failing to produce morally "clean" citizens. Obviously one aspect of the question at issue here is whether non-sectarian or undenominational schools are necessarily "Godless" schools. This question is further discussed in Chapter Thirteen, which deals with the matter of biblical instruction in the public school.

Turning to a consideration of the numerical aspects of the educational situation: in 1932 there were approximately 2,500,000 pupils enrolled in the schools and colleges of Canada, or somewhat fewer than twenty-five per cent. of the total population. Comparative statistics of the enrolments in state-controlled elementary, high and separate schools, as well as in the private schools of four Provinces, appear below. In the other Provinces no separate schools under state control are in operation. Five Protestant separate schools in Ontario with an enrolment of approximately three hundred are included under public schools. The figures in brackets indicate the number of schools in question. A considerable number of the elementary schools also do some high school work ("fifth classes") which, as previously stated, is practically equivalent to the first year of high school. Business and theological colleges, Indian schools, training schools for nurses, universities and similar institutions were omitted in compiling this table. In a general way the table includes the enrolment in grades one to twelve inclusive, of the elementary and secondary school. The following data are based on the official departmental returns of the various Provinces and on the Report for 1931 of the Dominion Bureau of Statistics.

SEPARATE AND PRIVATE SCHOOLS

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TABLE SHOWING ENROLMENT IN PUBLIC, SEPARATE AND DISSENTIENT,
AND PRIVATE SCHOOLS IN THE FOUR PROVINCES HAVING
SEPARATE OR DISSENTIENT SCHOOLS—1931.

Province	Elementary and High School Enrolment—including Cath- olic Denominational Schools In Quebec. (Schools of the Religious Majority)	Separate and Dis- sident School Enrolment. (Schools of the Re- ligious Minority)	Private School Enrolment
Ontario	Elementary School: 548,874 (6,403) High and Continuation Schools: 68,807(428)	109,661 (761)	11,196 (85)
Quebec	Catholic Schools: 507,484 (Elementary) Catholic Schools: 19,572 (Secondary)	76,200 (inc. 10,538 in the Protestant High School Grades.)	57,841 (524 in 1930)
Sask. (June 30, 1932, for Separate Schools)	Elementary: 225,000 (4,888) and High Schools	5,001 (29)	2,349 (37)
Alta. (June 30, 1932, for Separate Schools)	Elementary: 160,000 (3,331) and High Schools	5,831 (17)	2,944 (31)
Total	1,529,737	196,693	74,330

It is obvious from the data in the above table that the private school in Canada has not made serious inroads on the public school enrolment. In the five Provinces not accounted for in this table there were registered in private schools in 1931 about 18,000 pupils, making a total private school enrolment of approximately 92,000 out of a total school and college population of roughly 2,500,000. In British

Columbia, for instance, which has no separate schools, there were nearly 5,000 pupils attending private schools in 1931 out of a total school population of 142,000. This amounts to approximately one out of twenty-eight of the total school enrolment, which is practically the ratio that obtains throughout Canada. While the proportion of the school population attending private schools in British Columbia is higher than in the other English-speaking Provinces, this fact may probably be explained, in part at least, by the character of the population in the Pacific Coast Province, which is the most British (in respect of the birthplace of its citizens) of any Province. Old Country school traditions naturally find a counterpart in British Columbia.

A comparison of the private school situation in Canada with that in the United States where separate schools, as understood in Canada, do not exist, may prove interesting. According to the Bulletin¹ 2,760 private high schools and academies, enrolling also elementary school pupils, reported a total registration for 1930 of 646,171, made up as follows: 329,050 elementary pupils, 309,052 secondary pupils and 8,069 collegiate pupils. This enrolment represented an increase of nearly 93,000 over that of 1928. Of the 2,760 schools reported, 1,648 were Roman Catholic. Owing to the fact that 498 private schools did not report in 1930, the above total should be increased by about fifteen per cent. in order to approximate the actual enrolment of pupils in all private schools in the United States. This adjustment would place the total number of private school pupils in the United States at roughly 750,000.

¹ Number 20, 1931, Biennial Survey of Education in the United States, 1928-30, Chapter Seven—United States Department of the Interior.

Elementary
and High Schools,
1,579,737

Separate and
Discontent Schools,
196,693

Private Schools,
74,330

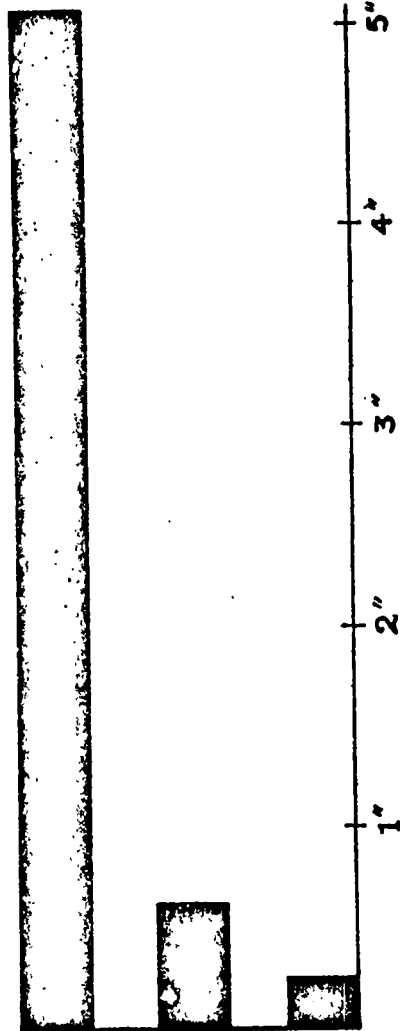


DIAGRAM ILLUSTRATING COMPARATIVE ENROLMENTS IN THREE CLASSES OF SCHOOLS. (FOUR PROVINCES.)
1' = 300,000.

Many of the private schools in the United States, as in Canada, attain a high degree of efficiency. Nearly half the American private schools maintained boarding departments. Approximately 6,500,000 bound volumes were found in the libraries of these institutions. The value of their buildings and grounds was nearly \$575,000,000, while their permanent endowment approximated \$80,000,000.

In 1930, out of a total population of 122,775,046 in the United States, the total number of pupils enrolled in the elementary and secondary schools of state school systems was 25,678,015, of whom 4,399,422 were found in public high schools. Hence about three per cent. of the pupils of elementary and secondary school age in the United States were enrolled in private high schools and academies. Of the private school enrolment nearly fifty-one per cent. were found in the elementary grades. The ratio of the private school enrolment to that of the state school in the United States is, therefore, nearly one to thirty-four as compared to one to twenty-eight for all Canada. Considerably over half of the private school registration in Canada, however, is found in the Province of Quebec, where nearly 58,000 pupils, out of a total for Canada of about 92,000, are registered. This leaves only 34,000 pupils enrolled in the private schools of the eight English-speaking Provinces, out of a total school population in the latter Provinces of approximately 2,000,000. The ratio in Canada, therefore, outside of Quebec, of the private school enrolment to that in government-controlled schools is about one to fifty-eight. This ratio is probably the more representative one to use in making comparisons with the private school situation in the United States, where school conditions resembling

those in the Province of Quebec do not exist. At the same time, there is no intention to suggest by the above statements that the average efficiency of the schools of Quebec is in any way inferior to that of the American schools or of the other provincial school systems of Canada. Indeed, in certain respects, and more particularly in the high quality of their classical training, the efficiency of the French secondary schools and colleges in the Province of Quebec is, in the writer's judgment, unequalled by that of any representative number of similar institutions in any Province or State of North America.

CHAPTER III

CANADA'S EDUCATIONAL BILL OF RIGHTS: APPLICATION OF SECTION 93, B.N.A. ACT

"THERE is a middle measure which satisfies all parties," wrote Emerson in his *Essay on Politics*, "be they never so many, or so resolute for their own." Section 93 of the British North America Act, 1867, in the judgment of the Fathers of Confederation, possessed the essential merits of this "middle measure" with respect to the delicate educational issues that had threatened to disrupt the negotiations preparatory to union. As frequent reference will be made in the course of the following discussion to the several clauses of Section 93, the import of these clauses and the reasons for their adoption should be briefly examined.

Section 93 reads, in part, as follows:

In and for each Province the Legislature may exclusively make laws in relation to Education, subject and according to the following provisions:

(1) Nothing in any such law shall prejudicially affect any Right or Privilege with respect to Denominational Schools which any class of persons have by law in the Province at the Union.

Various points arise in the interpretation of this subsection. The term, "exclusively," means exclusively of the federal Parliament. The Province in question may "exclusively" make laws regarding education, however, only within the sphere of its jurisdiction. If the Province transcends this sphere, it immediately becomes subject to federal interference. What constitutes a prejudicial act on the part of a

provincial legislature is discussed in the following chapter. Furthermore, the "right or privilege" referred to in the above subsection is not of any educational character but only "with respect to Denominational Schools." Matters of school hygiene and sanitation, for instance, could not be legally considered as of a denominational or sectarian character.

According to the judgment of the Judicial Committee of the Privy Council in the New Brunswick case, *Mahe v. Town of Portland* (1874),¹ by "denominational schools" is meant schools which were "permanently and by law denominational," and not schools that happened to be denominational in their operation for a time owing to the fact that the original intent of Section 93 of the B.N.A. Act had not been explicitly enforced. The mere accident of denominational teaching in a school, permitted on sufferance over a period of years, was not, in the language of their lordships, "a thing to which it is possible to give the colour of a legal right."

By the decision of the Privy Council in the case, *Trustees of the Roman Catholic Separate Schools for the city of Ottawa v. Mackell and others* (Appeal Cases 62), given in 1917, the meaning of the words, "any class of persons," was defined as follows: ". . . the class of persons to whom the right or privilege is reserved must . . . be a class of persons determined according to religious belief, and not according to race or language." According to this interpretation, "class of persons" is practically equivalent in meaning to "minority" as used in Subsection (3).

The important limitations expressed by the phrases,

¹ See Lefroy: *Leading Cases in Canadian Constitutional Law*; p. 80. Also, *Constitutional Law in Canada*, p. 145.

"by law" and "at the union," are discussed in some detail in subsequent chapters dealing with the Manitoba and Saskatchewan separate school issues.

Subsection (2), which relates to dissentient or minority schools in Quebec, reads as follows:

All the Powers, Privileges, and Duties at the Union by law conferred and imposed in Upper Canada on the Separate Schools and School Trustees of the Queen's Roman Catholic subjects, shall be and the same are hereby extended to the Dissentient Schools of the Queen's Protestant and Roman Catholic subjects in Quebec.

In Quebec, no Protestant dissentient schools had their existence sufficiently safeguarded "by law" prior to 1867. In Ontario, Roman Catholic separate schools had enjoyed a legal existence since 1843.¹ Hence Subsection (2) was designed to safeguard the existence of Protestant dissentient schools in Quebec to the same extent as the existence of Roman Catholic separate schools in Ontario would be safeguarded under Article 45, Subsection (6), of the Quebec resolutions.² In neither Province could dissentient schools (i.e. of the Protestant or Roman Catholic minority) be abolished or otherwise prejudicially affected by the provincial legislature after 1867.

Subsection (3) reads as follows:

Where in any Province a system of Separate or Dissentient Schools exists by law at the Union, or is thereafter established by the Legislature of the province, an Appeal shall lie to the Governor-General in Council from any Act or decision of any Provincial authority affecting any Right or Privilege of the Protestant or Roman Catholic Minority of the Queen's subjects in relation to Education.

¹ In 1841 an Act was passed by the Province of Canada that initiated the principle of separate schools. In an Act passed in 1843 the term, "separate" schools, first appears. (See Chapter Ten.)

² See page 28. This clause of the Quebec resolutions became incorporated as Subsection (1), Section 93, of the B.N.A. Act.

In the discussion of the Manitoba School Question an attempt will be made to bring the salient points of difference between Subsections (3) and (1) into clear relief. It was intended that the educational rights and privileges of religious minorities, when such were enjoyed "by law" either before or after the union, should be effectively safeguarded by Subsection (3). In discussing this Subsection, Sir Wilfrid Laurier (Hansard Debates) used the following words, which are quoted as best summing up the points in question:

If the legislature (i.e. provincial) establishes a system of separate schools, their legislative independence is inviolate; the (Dominion) government will not have the right to interfere; but if, afterwards, the legislature attempt to interfere with this creature of their own power, immediately their action becomes revisable by this government and subject to interference.

Subsection (3) gives the minority ground to appeal when the right or privilege affected is "in relation to education" and not, as in Subsection (1), "with respect to denominational schools." Under Subsection (3), for instance, the minority is competent to appeal against an economic or other disability (not denominational) imposed on their schools.

Subsection (4) provides machinery for remedial legislation in the event of an appeal under Subsection (3) being sustained. In the first instance a remedial order is issued to the provincial authorities in error; if this order is not carried out, resort may be had, but only in so far as the circumstances of the case warrant, to the enactment of remedial legislation by the federal parliament. The Manitoba School Question exemplifies the potential operation of this subsection.

Such, in outline, is the import of Section 93. The deeper significance of this section, as viewed in the

light of pre-Confederation problems, may now be examined.

The Hon. George Brown, as is generally known, was bitterly opposed to any system of separate schools. In his opinion, the parent and pastor were the best religious teachers, and the home and church were the rightful places where religious instruction should be imparted. Nevertheless, while disavowing the principle of separatism, he was ready to admit that in Upper Canada, where (in 1866) about one hundred separate schools out of a total of approximately four thousand were in operation, few evil effects had resulted, chiefly because the great majority of sectarian schools were situated in cities and towns. The fact that Roman Catholic separate schools were allowed to exist, however, placed the government in an awkward position. What safeguard was there to prevent the application of this principle to other denominations? In the name of justice these denominations were surely entitled to the same sectarian school privileges as were the Roman Catholics. Thus there was grave danger, Mr. Brown alleged, that the country might gradually become "studded with nurseries of sectarianism."

Fortunately Mr. Brown was magnanimous enough to set aside his personal scruples in deference to the great scheme of Confederation. "I admit," he stated, "that from my point of view, this (i.e. the compromise on education) is a blot on the scheme before the House; it is confessedly one of the concessions from our side that had been made to secure this great measure of reform. But assuredly, I, for one, have not the slightest hesitation in accepting it as a necessary condition of the scheme of union."

The Hon. Alexander Mackenzie was also a leader

of outstanding ability. In the course of an address delivered in the House on March 10, 1875, with reference to the New Brunswick School Act of 1871, Mr. Mackenzie used the following words:

For many years after I held a seat in the parliament of Canada I waged a war against the principle of separate schools. I hoped to be able, young and inexperienced in politics as I then was, to establish a system to which all would ultimately yield their assent. Sir, it was impracticable in operation and impossible in political contingencies; and consequently . . . when the Quebec resolutions were adopted in 1864 and 1865, which embodied the principle (that) should be the law of the land, the confederation took place under the compact then entered upon. I heartily assented to that proposition, and supported it by speech and vote in the confederation debates.

It might be remarked that the North-West Territories Act of 1875, which embodied the separate school principle, was fathered by Hon. Alexander Mackenzie.

These statements indicate the attitude of the Fathers of Confederation towards the principle of sectarian schools. The great Conservative leader and statesman, Sir John A. Macdonald, likewise entertained views on the subject even more tolerant than those expressed above, and the same is true of Sir Charles Tupper.¹

At any rate, it is abundantly clear that the inclusion of Section 93 in the Confederation bill was

¹ Sir Charles Tupper, one of the Fathers of Confederation, speaking in the Federal House, 1896, made the following statement:

"I say with knowledge that but for the consent to the proposal of Mr. Galt, who represented especially the Protestants of Quebec, and but for the assent of that conference to the proposal of Mr. Galt, that in the Confederation Act should be embodied a clause which would protect the rights of minorities, whether Catholics or Protestants, in this country, there would have been no Confederation. . . . It is significant that but for the clause protecting minorities, the measure of Confederation would not have been accomplished."

an indispensable condition of union. Of two apparent evils—separate schools, on the one hand, and the negation of federal union, on the other—statesmen like the Hon. George Brown believed that to choose the former was to choose the lesser.

Furthermore, there is a widespread but erroneous belief to the effect that the Roman Catholics of Upper and Lower Canada were primarily responsible for the introduction of the element of separatism into certain of our school systems. Rather is the opposite conception the true one, and to the Protestants of Quebec does this distinction ultimately belong. At least in the case of Subsections (2) and (3) of Section 93 the matter is free from serious doubt.

Mr. A. T. Galt, finance minister in the Macdonald Government of 1864 and representative of the Protestant minority in Quebec, was likewise the able champion of the educational rights of his fellow Protestant citizens. As already stated, the Protestants of Quebec enjoyed liberal separate school privileges in that Province prior to Confederation. These privileges, nevertheless, were not adequately protected "by law," and hence the majority might at any future time, if so disposed, become so tyrannical as even to suppress minority schools. To fortify their position and render it safe from subsequent invasion, the Quebec Protestants aimed to secure two safeguards in particular: first, the equitable distribution of government moneys for school purposes, and, second, the establishment of a Protestant board of education to manage their own school affairs. Article 45, Subsection (6), of the resolutions adopted at the Quebec Conference, placed education under the control of the provincial legislatures, "saving the rights and privileges which the Protestant or Roman

Catholic minority in both Canadas may possess as to their denominational schools at the time when the union goes into operation." Thus the need for absolute certainty as to the state of the provincial school law, before the union was effected, admitted of no doubt.

In an address to his constituents delivered at Sherbrooke (as reported in the *Montreal Gazette*, October 28, 1864), Mr. Galt dealt clearly with this subject:

Now this (i.e. safeguarding minority privileges) applied to Lower Canada, but it also applied, and with equal force, to Upper Canada and the other Provinces; for in Lower Canada there was a Protestant minority and in the other Provinces a Roman Catholic minority. The same privileges belong to the one of right here as belonged to the other of right elsewhere. There could be no greater injustice to a population than to compel them to have their children educated in a manner contrary to their own religious belief.

Mr. Galt gave his pledge that, before the union was consummated, the government would bring in a measure designed so to perfect the school law of Quebec that the Protestant minority would be protected against any possible infringement of its rights at the caprice or ill-will of the majority. Such a bill was introduced in 1866 during the last session of the union parliament, but on this occasion a unique occurrence took place. A certain Mr. Bell, member for Russell County, Upper Canada, introduced a bill¹ identical with the one relating to the Lower Province, except that the words "Upper Canada" were substituted for Lower Canada. The government would have been able to carry the second bill by the Lower

¹ The two bills had the same wording. The minority, as is apparent, referred to a different religious sect in each case.

Canadian vote, but it was opposed by a great majority of the representatives from Upper Canada. Hence matters reached a crisis and the ministry had no alternative but to withdraw their measure. Mr. Galt,¹ in deference to the pledges made to his constituents, forthwith resigned his seat in the administration.

Sir John A. Macdonald explained the dilemma as follows:

Had this bill been pushed, also, the singular spectacle of a bill for Upper Canada being carried by Lower Canada, and a bill for Lower Canada by Upper Canada votes would have been presented. This would have been a most unfortunate occurrence. They were not like ordinary bills; if passed they would have been a fundamental part of the constitution of the country.

The matter, however, did not rest here. The government appointed certain delegates to proceed to England, whose duty it was to supervise the legislation preliminary to the completion of the Confederation scheme, and Mr. Galt was a member of this commission. According to the *Montreal Gazette* of October 24, 1866, Mr. Galt accepted the

¹ "The Federation of Canada" (1867-1917). A collection of four addresses (Oxford University Press). The following is from the address of Sir John Willison, pages 46-47.

"Even the educational clauses (of the B.N.A. Act) for which Galt was peculiarly concerned were designed to safeguard Protestant rights and privileges in Quebec, although they have been employed to protect or extend Catholic rights and privileges in other provinces. Quebec determined the federal character of the constitution and the degree of authority which the provinces should possess. Cartier required the support of the Roman Catholic Hierarchy of Quebec to hold his personal position. Without the support of the Hierarchy Confederation could not have been accomplished."

"Cartier had to overcome very formidable influences (to Confederation) in Quebec. Except Galt, no other public man of the first class in the Province supported the union proposals. Galt was an uneasy and uncertain ally. He drifted to the point of revolt if he did not actually break with John A. Macdonald over the clauses designed to guarantee the educational rights of the Protestant minority."

appointment "for the express purpose of watching over these important interests (i.e. minority school rights) as well as of lending his aid to the consummation of the measure of Confederation."

As a result of the London Conference, the British North America Act was evolved. In its issue of March 2, 1867, the *Montreal Gazette* made the following statement:¹

The main thing required in immediate practice is that the moneys collected from the taxation of Protestants shall, if required, be available for the support of separate schools. The right of appeal, as an ultimate resort, will always operate (with) the effect of affording a check. And the English-speaking Protestants of Lower Canada must not forget that their appeal will be to a preponderating majority of their own race and creed; and it is possible that if they get hurt they will make their cry known.

In pursuance of the provisions of Section 93 the legislature of Quebec passed a statute in 1869 (32 Vict., Chap. 16) establishing a dual system of schools under the control of a council composed of two committees, one consisting of Protestant and the other of Roman Catholic members, each committee to manage the schools under its jurisdiction. Suitable financial arrangements were also made, and the Protestant minority of Quebec has since had little valid reason to complain of unjust treatment at the hands of the Roman Catholic majority. The school situation in Quebec is discussed in Chapter Twelve.

The applicability of Section 93, whether in its original or in modified form, to new Provinces on entering Confederation is a question that has given rise to considerable controversy.² Section 2 of the

¹ The reference is to Subsection (3), Section 93, which had appeared in draft form in the issue of the previous day.

² See explanatory extracts at the end of this chapter.

British North America Act, 1871, however, confers on the federal Parliament the authority to provide constitutional machinery for new Provinces on their being created out of unorganized territory; and thus it would appear that, in such cases, the Dominion Government is competent to exercise certain discretionary powers whereby it is not obliged to apply Section 93, precisely in its original form, to new Provinces entering Confederation.

Such, in outline, are the import and background of the fundamental school law of Canada. The discussion of separate school and language problems in the following chapters will exemplify the application of Section 93 to concrete cases.

The following extracts are explanatory of some of the points raised in the body of this chapter. For convenient reference they are placed here rather than in the Appendix.

What the constitution of the future provinces shall be, in view of the pledges which have been referred to, or in view of any other set of circumstances, will be for parliament to decide when it decides to create those provinces."—Sir John Thompson, July 16, 1894, Hansard, p. 6130.

"The right of the Dominion to impose restrictions upon the provinces about to be formed, in dealing with the subject of education and separate schools, is, I think, not beyond question. This would require more consideration than I have been able yet to give it, and must ultimately be settled by judicial decision. I am asked, however, whether parliament is constitutionally bound to impose any such restriction, or whether it exists otherwise, and I am of opinion in the negative. It must be borne in mind that I am concerned only with the question of legal obligation."—Mr. Christopher Robinson, as quoted by Mr. Fitzpatrick, May 3, 1905, Hansard, p. 5336.

Mr. Clement, the author of a well-known work on the Canadian Constitution, wrote as follows:

"It follows that Section 93 of the British North America Act—the clause defining the legislative jurisdiction of the provincial assembly over education—must, *proprio vigore* and without possibility of amendments by Federal Legislation, be operative in any new Province immediately upon its creation as a Province."

This question is discussed in Chapter Six and also in Appendix I. The matter was never referred to the Privy Council for a final verdict.

Section 2 of the B.N.A. Act, 1871, reads as follows:

"The Parliament of Canada may from time to time establish new Provinces in any Territories forming for the time being part of the Dominion of Canada, but not included in any Province thereof, and may, at the time of such establishment, make provision for the constitution and administration of any such Province, and for the passing of Laws for the peace, order and good government of such Province, and for its representation in the said Parliament."

The following extract from the judgment delivered by Viscount Haldane in the *Tiny Township Case*, involving an appeal from the Supreme Court of Canada by the Roman Catholic minority in Ontario,¹ stresses the distinction between Subsections 1 and 3 of Section 93, British North America Act.

"Whenever an Act or decision of a Provincial authority affecting any right or privilege of the minority, Protestant or Roman Catholic, in relation to education is challenged, an appeal is to lie to the Governor-General in Council, as distinguished from the Courts of law. No doubt if what is challenged is challenged on the ground of its being *ultra vires*, the right of appeal to a Court of law remains for both parties unimpaired. But there is a further right not based on the principle of *ultra vires*. That this is so is shown by the extension of the power to challenge to any system of separate or dissentient schools established by law after Confederation, and which accordingly could not be confined

¹ Privy Council Appeal, Number 158 of 1927 (See Chapter Nine).

to rights or privileges at the time of Confederation. The omission of the word 'prejudicially' in Subsection 3 tends to bear out the view that *something wider than a mere question of legality was intended*, and the language of Subsection 4, enabling the Dominion Parliament to legislate remedially for giving effect, 'so far only as the circumstances of each case require,' to the decision of the Governor-General in Council, points to a similar interpretation. What is to be dealt with is a right or privilege in relation to education.

"Their Lordships are of opinion that where the Head of the Executive Council in Canada is satisfied that injustice has been done by taking away *a right or privilege which is other than a legal one from the Protestant or Roman Catholic minority in relation to education*, he may interfere. *The step is one from mere legality to administrative propriety, a totally different matter.* But it may be that those who had to find a new constitution for Canada when the British North America Act was passed in 1867, came to the conclusion that a very difficult situation could be met in no other way than by transferring the question from *the region of legality to that of administrative fairness.*"

CHAPTER IV

AN HISTORIC SCHOOL ISSUE: 1890-1896

WE NOW come to a discussion of the famous Manitoba School Question, which gave rise to the most bitter controversy over separate school rights and privileges ever waged in Canada. This controversy was not only sectarian and racial but forensic and political as well. Its repercussions were felt throughout Canada. On two occasions during the course of the protracted litigation that accompanied the acrimonious verbal exchanges between the political and sectarian camps of the day, the decisions of the Supreme Court of Canada were reversed by the Judicial Committee of the Privy Council; while, after the smoke of political battle had finally cleared away in 1896, the Conservative party, under the leadership of Sir Charles Tupper, was found shattered and routed at the polls.

When Manitoba entered the Union in 1870, no "right or privilege with respect to denominational schools" existed "by law" in the area constituting the new Province; hence Section 22 of the Manitoba Act (a Dominion statute), while adopting almost the identical wording of Section 93 of the B.N.A. Act in other respects¹ added the words, "or practice"²; and it is chiefly on account of the presence of these words that the appeal in the Barrett case is sometimes misinterpreted.

In 1871 the Legislature of Manitoba passed a

¹ Subsection (2) of Section 93 relating to Quebec was omitted for obvious reasons.

² See explanatory statement regarding the New Brunswick situation at the end of this chapter.

statute providing for the establishment of a school system similar to that existing in the Province of Quebec or to the system created in the North-West Territories by the ordinance of 1884. Thus separate schools were a distinctive feature of the new scheme. A board of education, consisting of two sections, one Protestant and the other Roman Catholic, was constituted. Each section was empowered to regulate matters pertaining to the conduct of its own schools—such as the textbooks to be used in religious or other instruction—and to control the inspectorial, examination and licensing standards in all schools under its jurisdiction. At first there were twenty-four school districts, corresponding to the twenty-four electoral divisions, and of this number half were to be considered Protestant in character and half Roman Catholic. Trustee boards were given the usual power to borrow money and issue debentures on the security of the district, while a legislative grant was divided between the two sections of the board of education in proportion to the number of children of school age in Protestant and Roman Catholic districts respectively. The balance of any funds required for school purposes was obtained by means of a municipal levy or by a special tax on the district.

By the year 1890 there were 629 districts under the Protestant section of the board of education, while only ninety districts were subject to the Roman Catholic section. It is also worthy of remark that the character of the work done in Roman Catholic schools was alleged to be extremely deficient in comparison with that of the schools under the Protestant jurisdiction. Hence the opponents of separate schools were furnished with a weapon for their abolition.

In 1890 the Legislature of Manitoba passed two

statutes relative to education, Chapters 37 and 38, the latter of which was called the "Public Schools Act, 1890." The validity of this Act, the effect of which was to establish a system of free, national schools which all classes of ratepayers were obliged to support, soon became the subject of prolonged litigation.¹

By the first of these statutes a department of education, consisting of the executive council or a committee of the same and of an advisory board of seven members, was created, and to this department were entrusted the powers previously exercised by the denominational sections of the board of education which now passed out of existence. While, according to the Public Schools Act, all public schools were to be free and non-sectarian, provision was made whereby, at the option of the trustees, religious exercises might be held immediately before the close of school in the afternoon. A conscience clause permitted any child to withdraw before such exercises were held if the parent or guardian so notified the teacher. After the passing of the Public Schools Act of 1890 private or denominational schools might still exist, while the children of any ratepayer were not thereby compelled to attend the public school. This Act, however, excluded from sharing in the legislative grant all schools not conducted in accordance with the terms of the Act or the regulations of the department. Thus ratepayers who desired to maintain private or sectarian institutions were obliged to do so entirely

¹ See *City of Winnipeg vs. Barrett*: 1892, A.C. 445. Sir John Thompson frankly admitted that the Dominion Government largely financed the litigation in the Manitoba School Question. The question was a critical one and only an authoritative judicial decision would prove satisfactory.

at their own expense, while, at the same time, they were required to support the national school system.

The Barrett Case, which set the legal process in motion, went before the Privy Council in 1892 as an appeal from the judgment of the Supreme Court of Canada reversing the decision of the Court of Queen's Bench for Manitoba. The case arose out of a summons to show cause why a by-law of the city of Winnipeg, passed pursuant to the Public Schools Act of 1890, for raising taxes for school and municipal purposes, should not be declared illegal on the ground that "the amounts levied for Protestant and Roman Catholic schools were therein united and that one rate was levied upon Protestants and Roman Catholics alike for the whole sum."

Mr. Justice Killam, who originally heard the case, held that the Public Schools Act was valid, and this view was upheld by the Supreme Court of Manitoba (Dubuc, J., dissenting). The Court of Queen's Bench for Manitoba took the ground that "rights and privileges" included "moral rights," and that whatever practice any class of persons was in the habit of following "with respect to denominational schools" at the time of the Union could not be prejudicially affected by provincial legislation, but that none of these privileges had been infringed on by the Act of 1890. In other words, the imposing of an extra tax did not necessarily mean the prejudicing of rights or privileges enjoyed by a class of persons "with respect to denominational schools."

The Supreme Court of Canada unanimously reversed the order of the Manitoba Courts (19 S.C.R., 374) on the ground that the privileges enjoyed "by practice" (*de facto* privileges) were to be preserved, and that the inevitable result of the Act of 1890 was,

either directly or indirectly, to deprive Roman Catholics of their denominational schools by compelling them to support a dual school system. Mr. Justice Patterson remarked: "But the right or privilege may continue to exist and yet be prejudicially affected. It is not the cancelling or annulling of the right that is forbidden. The question is: Does the statute of 1890 injuriously affect the right? That it does so seems to me free from serious doubt." The following passage also appears in the judgment, and is quoted on account of its probable bearing on the language question: "There is no general prohibition which shall affect denominational schools. . . . There is, therefore, room for legislative regulation on many subjects, as, for example, compulsory attendance of scholars, the sanitary condition of schoolhouses, the imposition and collection of rates . . . and sundry other matters, which may be dealt with *without interfering with the denominational characteristics of the school.*" However, as double taxation would render it more difficult to exercise sectarian school rights enjoyed "by practice" prior to 1870, it was held that such rights were prejudicially affected by the Act of 1890.

On appeal to the Privy Council the judgment of the Manitoba Courts was affirmed, and the Act of 1890 was declared *intra vires* of the provincial legislature. Lord MacNaughten, in giving the judgment, pointed out that, in the opinion of their lordships, "it would be going much too far to hold that the establishment of a national school system of education upon an unsectarian basis is so inconsistent with the right to set up and maintain denominational schools that the two things cannot exist together, or that the existence of the one necessarily implies or

involves immunity from taxation for the purpose of the other."

Thus the final decision in the Barrett Case simply meant that the rights or privileges possessed by the Roman Catholic minority in 1870, *however acquired*, were held not to have been affected prejudicially by the Public Schools Act of 1890. It was not on the distinction between rights given "by law" and rights established "by practice" that the ruling of the Privy Council turned. In point of fact, the only denominational school rights or privileges possessed by the minority in 1870 were those established by practice, but this state of affairs was not the turning-point in deciding the issue. Any "class of persons" might still establish and conduct separate schools at their own expense after 1890, and the imposition of an additional tax for national school purposes could not be considered tantamount to prejudicially affecting such separate school privileges. It was owing not to the Act of 1890 but to religious conviction that the minority found themselves unable to enjoy the advantages of a national school system.

It should be manifest from the discussion so far that the somewhat common statement to the effect that in 1890 Manitoba abolished its separate school system is scarcely correct. In a strictly legal sense this is just what Manitoba did not do and was not competent to do. The fact that an economic disability was imposed on separate school supporters in Manitoba by the Act of 1890, whereby they were obliged to support the national schools while receiving no government grant for their separate schools, was not, according to the decision of the Privy Council in the Barrett Case, equivalent to prejudicially affecting the rights or privileges inherent in the denominational

schools of the minority. The prejudice, so far as it existed, was economic rather than sectarian. After 1890 the religious minority was still competent to establish and support its own separate schools. Nor was the provincial Legislature competent, as it would have been in the case of ordinary private schools, to prevent the establishment or operation of minority separate schools conducted under the above conditions. The fact that Roman Catholic separate schools existed in Manitoba as late as 1916—hence the reason for the Coldwell Amendments discussed in the following chapter—is ample evidence that Manitoba did not legally abolish its separate schools in 1890. In a strictly legal sense separate schools in Manitoba have never been abolished. As a matter of fact several Roman Catholic separate schools are in operation in the city of Winnipeg at the present time.

The Brophy Case followed in 1895.¹ A word of explanation as to the reason for instituting the Brophy Case (by the Dominion Government) should here be given. Section 22 of the Manitoba Act differs from Section 93 of the British North America Act in the following respect: the former section² makes no provision whereby an appeal to the Governor-General in Council for remedial legislation is allowed in case the separate school system were established specifically *after* the union. Now the system of dissentient schools in Manitoba was, as already stated, created in 1871 or after the Union,

¹ See Brophy vs. Attorney-General of Manitoba, 1895, A.C. 202.

² The clause in question of Section 22 reads as follows:

"An appeal shall lie to the Governor-General in Council from any act or decision of the legislature of the Province or of any provincial authority, affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to education." Here, it will be observed that the words "or is *thereafter* established," found in Subsection (3), Section 93, B.N.A. Act, are omitted.

and it was this system which was alleged to be prejudicially affected by the Public Schools Act of 1890. Hence the Dominion Government was in doubt (according to the statement made in parliament by Sir John Thompson, March 6, 1893) as to its competence to hear the minority appeal for remedial legislation, following upon the decision in the Barrett Case, and the legal process was again set in motion to determine this point.

The leading principle involved in this case was whether the Governor-General in Council had the authority to admit an appeal from the Roman Catholic minority of Manitoba under the circumstances set out in the Barrett Case. Two specific questions were to be answered: (1) Did an appeal lie to the Governor-General in Council against the legislation set out in the Barrett Case; and (2), In the premises, had the Governor-General in Council the jurisdiction to issue a remedial order? By a majority decision the Supreme Court of Canada held that no appeal lay.

Subsection (1), Section 22, of the Manitoba Act, 1870, corresponds to Subsection (1), Section 93, of the B.N.A. Act with the addition of the words "or practice." Subsection (2), Section 22, of the Manitoba Act corresponds (with a few minor changes to meet Manitoba conditions) to Subsection (3), Section 93, of the B.N.A. Act. Hence, where Subsections (1) and (2) are used in the argument of the Brophy Case, the reasoning would still hold good if Subsections (1) and (3), Section 93, of the B.N.A. Act were substituted.

In delivering the judgment of their Lordships to the effect that the Governor-General in Council could entertain an appeal and issue remedial orders, notwithstanding the decision in the Barrett Case, Lord Halsbury pointed out that Subsection (2), Section 22,

of the Manitoba Act was not designed to provide machinery for the enforcement of Subsection (1). Subsection (1), imposing a limitation on the legislative powers of the Province, might be directly enforced by an appeal to the judiciary, since any enactment contravening its provisions was beyond the competence of the provincial Legislature, and therefore was null *ab initio*. The appeal allowed under Subsection (2) had reference to a different set of circumstances from those contemplated by Subsection (1); the latter allowed an appeal to the Courts, the former to the Governor-General. "The first subsection," to quote the words of Lord Halsbury, "is confined to a right or privilege of a 'class of persons' with respect to denominational education 'at the Union.' The second subsection applies to laws affecting a right or privilege 'of the Protestant or Roman Catholic minority' in relation to education. . . . The first subsection invalidates a law affecting prejudicially the right or privilege of 'any class' of persons; the second subsection gives an appeal only where the right or privilege affected is that of the 'Protestant or Roman Catholic minority.'"

According to the decision of the Privy Council in the case, *Ottawa Separate Schools vs. Mackell*, 1917,¹ referred to in the previous chapter, the meaning of the expression, "any class of persons," has been defined as follows:

" . . . the class of persons to whom the right or privilege is reserved must, in their lordships' opinion, be a class of persons determined according to religious belief and not according to race or language"; also that "in relation to denominational teaching, Roman Catholics together form within the meaning

¹ A.C. 62.

of the section a class of persons, and that class cannot be subdivided into other classes by considerations of the language of the people by whom that faith is held." In further elucidation, it was also stated, that "persons joined together by the union of language and not by ties of faith, do not form a class of persons within the meaning of the Act." This final decision clarifies the *obiter dictum*¹ expressed above by their lordships in the Brophy Case. The decision in the Ottawa case, which has a special significance with respect to the Saskatchewan and Ontario school situations, definitely rules out language or race as having any legal relationship to denominational teaching.

The ruling in the Brophy Case means that, although a provincial Legislature is competent to revoke rights or privileges it may have granted *after* the Union to a religious minority "in relation to education," an appeal will lie (under Subsection (3), Section 93, B.N.A. Act) to the Governor-General in Council for remedial legislation. The (provincial) Public Schools Act of 1890, revoking certain rights and privileges enjoyed by the minority under terms of the (provincial) Act of 1871, was declared in the Barrett Case to be *intra vires*; nevertheless, according to the decision in the Brophy Case, an appeal lay to the Governor-General in Council for relief. The Act of 1890, it was held, prejudicially affected the rights and privileges of Roman Catholics, "*in fact although not in law*," since it taxed them for the upkeep of schools "which were obnoxious to their religious opinions in regard to education." It should be noted, furthermore, that the above provincial acts referred to a time after the provincial status was reached. Were

¹ A thing said by the way or in amplification of an opinion.

the minority school rights or privileges possessed "by law" (or in Manitoba "by law or practice") *before the Union*, it would have been beyond the competence of the provincial Legislature to revoke such rights. Had the Public Schools Act of 1890, for instance, withdrawn the privilege, enjoyed by Roman Catholics in Manitoba (by practice) prior to 1870, to establish and maintain denominational schools at their own expense, the Act would have been null *ab initio*.

The distinction between the Barrett and Brophy cases, which were primarily based on Subsections (1) and (3) respectively of Section 93, B.N.A. Act, is brought out in the judgment of the Privy Council in the so-called Tiny Township Case.¹ This was an Ontario case involving an appeal by the Roman Catholic minority from a decision of the Supreme Court of Canada. In delivering judgment, Viscount Haldane used the following words: "Their Lordships are of opinion that where the Head of the Executive Council in Canada is satisfied that injustice has been done by taking away a right or privilege which is *other than a legal one* from the Protestant or Roman Catholic minority, in relation to education, he may interfere. *The step is one from mere legality to administrative propriety, a totally different matter.* But it may be that those, who had to find a new constitution for Canada when the British North America Act was passed in 1867, came to the conclusion that a very difficult situation could be met in no other way than *by transferring the question from the region of legality to that of administrative fairness.*"

The Barrett Case, based on Subsection (1) above, turned on the question of *legality* where the principle of *ultra vires* was applicable; whereas the Brophy Case, based on Subsection (3) above, turned on the

¹ Privy Council Appeal No. 158, of 1927.

question of *administrative fairness* in relation to education.

Let us assume, as an illustration of the application of the Brophy decision, that British Columbia—which is free from every vestige of separate schools or biblical instruction in public schools—as a result of dissensions arising from the possible adoption of biblical instruction in the public schools of the Province, conceded to the Roman Catholic minority the legal privilege of establishing and supporting only their own denominational schools. That British Columbia is competent to grant such a privilege is beyond dispute. Furthermore, as such separate school privileges would have been granted by the Province after the Union, there is little doubt that, according to the decision in the Brophy Case, the Legislature of British Columbia would be competent to revoke these privileges “in relation to education.” It is also manifest, however, in the light of the Brophy decision, that the denominational minority in British Columbia would, in the event of such revocation, have the right of appeal to the federal government for remedial legislation. In such an eventuality the political and sectarian stage would be all set for another school controversy such as convulsed Canada forty years ago.

After the decision in the Brophy Case was rendered, the Governor-General in Council heard the appeal of the Manitoba minority on March 5, 6 and 7, 1895. On March 21st was issued the remedial order to the Manitoba Legislature calling on it to restore the following privileges to the religious minority: the right to build, maintain, equip and conduct Roman Catholic schools as under the repealed statute, the Act of 1871; the right to a proportional share in the

legislative grant; and exemption from support of other schools. On June 19th the Manitoba Legislature presented arguments setting forth reasons why the order should not be made effective—to which the Dominion Government replied that, if redress was not forthcoming, remedial legislation would be enacted. In January, 1896, the Dominion Parliament convened and the remedial bill was introduced. The Liberal Opposition, however, effectively resisted its passage; attempts to negotiate with Manitoba proved fruitless, and the "effluxion of time" spelt the end of parliament's legal existence. In the ensuing election the "no coercion" policy of Sir Wilfrid Laurier carried the Liberal party to victory. The following year saw the so-called Laurier-Greenway Compromise put into effect, and Sir Wilfrid Laurier was thus enabled to redeem his pledge to his compatriots.

As a result of this Compromise, the law was amended in 1897 to permit of the following changes: religious teaching from three-thirty to four o'clock, or on specified week-days, if authorized by a majority of the trustees or on petition of a certain number of ratepayers; in villages and rural districts where the average attendance of Roman Catholic children is twenty-five or more, and in cities and towns where such attendance is forty or upwards, the trustees shall, on petition from the parents or guardians of such number of Roman Catholic children, employ at least one legally qualified Roman Catholic teacher—a right which is reciprocal with respect to the employment of a non-Roman Catholic teacher; separation of pupils in different rooms for religious teaching, but not for secular work; the bilingual system of instruction in the case of schools attended by at least ten pupils

whose mother tongue is non-English.¹ The bilingual clause, however, was repealed in 1916 by the provincial Legislature.

The notes below elucidate the discussion in the body of this chapter. For convenient reference they are placed here rather than in the Appendix.

The following statement regarding the New Brunswick situation explains the reason for the insertion of the words, "or practice," in Section 22 of the Manitoba Act.

Shortly after Confederation, as stated in the previous chapter, an agitation was set on foot in New Brunswick to revoke the privilege, enjoyed by the Roman Catholic minority since 1858, of giving religious instruction in their schools. In 1871 the Provincial Legislature passed a statute abrogating this privilege and making all schools, receiving government aid, non-sectarian and free. Had the minority enjoyed their separate school privileges "by law," the provincial statute would have been *ultra vires*. Hence it was to guard against any encroachment similar to that threatening the Roman Catholics of New Brunswick in 1870 (and carried out in 1871) that the words "or practice" were inserted in the Manitoba Act of 1870. Until as late as 1875 the Roman Catholics of New Brunswick attempted to have the B.N.A. Act amended so as to enable them to enjoy the same privileges, with respect to sectarian teaching, as were enjoyed by the minorities of Ontario and Quebec, but their efforts were unsuccessful.

The following passage from Sir J. A. Macdonald's Report of 1872 explains the New Brunswick situation: "The Act complained of is an Act relating to common schools, and the Acts repealed by it apply to parish, grammar, superior and common schools. No reference is made in them to separate, dissentient, or denominational schools, and the undersigned does not, on examination, find that any

¹ See Revised Statutes of Manitoba (R.S.M.), 1913, Cap. 165, Sections 249-58.

statute of the Province exists establishing such schools. It may be that the Act in question may operate unfavourably on the Catholics or on other religious denominations, and if so, it is for such religious bodies to appeal to the Provincial Legislature which has the sole power to grant redress." In other words, the school privileges of Roman Catholics in New Brunswick prior to 1871 existed by accident or sufferance rather than by law. (See *Maier vs. Town of Portland*, 1874, *Wheeler's Confederation Law*, p. 366.)

Sir John Thompson, March 6, 1893, Hansard, p. 1794. Re Disallowance of the Manitoba Public Schools Act of 1890.

"Why should we (the Dominion Government) by the exercise of the strong hand of disallowance, destroy a provincial statute on the ground that it was null and void, and thus invoke an immediate conflict with the Provincial Legislature upon a subject and for a reason which could be dealt with by a tribunal in which the people of the Province would have confidence, when they might not have confidence in the executive of the country, actuated, as it might appear to be, by political motives or religious sympathy?"

Sir J. Thompson took the ground that, if the courts decided the Act was *intra vires*, it should not be disallowed, but the question of remedial legislation and redress might then be considered; whereas, if the Act were declared by the provincial tribunal to be *ultra vires* it would not need to be disallowed.

Mr. W. Laurier, March 8, 1893; Hansard, p. 1982. Re Reference by the Dominion Government of the Manitoba School Question to the Supreme Court of Canada.

"I say that the reference to the Supreme Court under such circumstances is most dangerous, because, if the Supreme Court should decide that the Government have the power to interfere with the legislation of Manitoba, and the Government should not obey the legal mandate which they themselves had sought, there would be a powerful and a rightful agitation in some parts of the country against the Government."

Re Remedial Legislation—Manitoba School Question.

Mr. W. Laurier, July 15, 1895, accused the Government of a record of "unfulfilled promises, a record of broken engagements, a record of decisions adopted and abandoned, a record of conflicting determinations and of retrograde modifications." He diagnosed the Government's case as an affection resulting from "some cerebral malformation which, as soon as they have taken any course upon any question, crowds upon their attention all the objections against that course, and impels them to undo that which they have done. Looking at their course it would seem that their nights and their days are haunted by the demon of doubt and vacillation." Their policy was alleged to be "bullying in language and weak and meek in execution."

And again on March 3, 1896, the Leader of the Opposition spoke as follows: "The argument seems to be overwhelming, that, if this bill were to become law, while it would afford no protection whatever to the suffering minority in Manitoba, it would be a most violent wrench of the principles upon which our constitution is based."

Sir Richard Cartwright on March 11, 1896, struck a like note: "The best thing they (the Government) can offer to us is that if we pass this bill (the Remedial Bill) we will be opening an era of fighting and wrangling and arguing, not only *de die in diem* but *in saecula saeculorum*."

Mr. Foster accused the Leader of the Opposition of incapacity, carelessness and cowardice in not committing himself and the Liberal party to a definite policy and assisting the Government in the alleged crisis, which, as Laurier maintained, was shaking Confederation to its foundation and disintegrating the country.

Mr. Laurier announced his policy in 1893 to the following effect, which he again proclaimed in 1895: the "question which was to be solved was not a question of law but simply a question of facts (i.e. were the schools in Manitoba Protestant); facts to be ascertained in order to lay down the law." Furthermore, if the facts showed that the grievances of the minority were valid and the schools were Protestant, sufficient grounds for interference existed. The Government, he alleged, saw fit to ignore his advice, and hence he was justified in waiting to see what policy it had to offer.

CHAPTER V

MANITOBA'S INDIRECT ATTEMPT TO SOLVE ITS SEPARATE SCHOOL PROBLEMS: THE COLDWELL AMENDMENTS AND BILINGUALISM, 1912-16

IT IS a well-known principle of constitutional law that no legislature, corporation or person is competent to do indirectly what it cannot legally do directly. During the years 1912 to 1916, however, certain members of the Manitoba Government did not hesitate to resort to the above type of subterfuge. Of all the naive, if not bare-faced, attempts at evasion of the spirit of the law, probably no example in Canadian history is more glaring than the ill-considered and abortive Coldwell Amendments discussed in the present chapter.

From 1897 to 1912 the denominational aspect of school legislation in Manitoba fell into the background. The majority of the parochial schools in rural districts had come under the operation of the Public Schools Act, while a number had been de-organized. By 1894, of the ninety-one districts previously controlled by the Roman Catholic section of the Board of Education, twenty-four had been disbanded for lack of support or for other reasons, while twenty-seven of the districts formed prior to 1890 and nine districts formed after that date were being administered as public schools under the Act. Gradually the Roman Catholics were outgrowing their active opposition, if not their resentment, to the new legislation. For several years after its creation in 1890 no Roman Catholics sat on the advisory Board of Education, but in 1898, following the operation of

the Laurier-Greenway Compromise, a representative Roman Catholic became a member of this Board.

In the cities of Winnipeg and Brandon, however, the Roman Catholics still maintained their denominational schools at their own expense, while contributing as well to the support of the public school. It is alleged that, in order to lighten the heavy financial burden, the Public Schools Amendment Act, better known as the Coldwell Amendments, was passed in 1912; furthermore, it has been asserted that the moral effect of these amendments materially contributed to the overwhelming defeat of the Roblin Government which had fathered them. The outstanding change in the law introduced by Mr. Coldwell, Minister of Education in 1912, is limited to the interpretation of the word "school," as set forth in the following subsection¹: "the expression 'school' means and includes any and every school building, *school room or department in a school building* owned by a *public school* district, presided over by a teacher or teachers." This definition of a school seems, to say the least, anomalous. There might, for instance, be fourteen or twenty "schools" in the one school building. But the purpose of the amendment was not difficult to detect. By the amended law of 1897, as stated in the previous chapter, the average attendance of forty or more Roman Catholic children "in any school in towns and cities"² was sufficient, on the "petition of parents or guardians of such number of Roman Catholic children," to ensure the employment of one legally qualified Roman Catholic teacher in the school. Now to apply the Coldwell Amendments to a concrete case: If there were, for example, six depart-

¹See Subsection (a), Section 2, Cap. 165, R.S.M., 1913.

²See R.S.M., 1913, Cap. 165, Section 252.

ments in the one public school building, each of which accommodated on the average at least forty Roman Catholic pupils, the trustees would, on being duly petitioned to that effect, be required to engage six qualified Roman Catholic teachers. The school, of course, would be public, for no other class of school is, since 1890, recognized by law. If, therefore, by any process of legal procedure the parochial schools in Winnipeg and Brandon could be brought within the purview of "public schools," at the same time retaining their former average attendance of Roman Catholic pupils, they could, at least, have teachers of their own religious faith, while conforming to the provisions of the Public Schools Act in other respects. The position of these schools would, in effect, be very similar to that of the separate schools in Saskatchewan as discussed in the following chapter.

It should be borne in mind, however, that the Public Schools Act likewise declared that all public schools were to be non-sectarian, and that "no separation of pupils by religious denominations shall take place during the secular school work." The presence of these clauses proved an insurmountable obstacle to the efforts of those who sought relief through the application of the Coldwell Amendments.¹

A petition was submitted in 1913, on behalf of the Roman Catholic schools of Winnipeg, requesting the public school board of trustees to take over and

¹ Certain political gossip current in the West twenty years ago, with regard to the extension of Manitoba's boundaries, might be mentioned. It was alleged that Sir Wilfrid Laurier's hands were tied by Quebec influence and that no accession of territory to Manitoba was possible until the Roman Catholic minority of the Province was granted a fuller measure of sectarian school privileges. With the passage of the Coldwell Amendments, however, the Quebec ban was alleged to have been removed, and Sir Robert Borden was free to grant the territorial extension.

operate the two separate or parochial city schools. It was maintained, however, by not a few that, on the basis defined by the petitioners, the change in the status of these schools would be of an administrative character only. The Coldwell Amendments were alleged to serve as a sort of subterfuge by means of which the schools in question might technically be brought under the operation of the Public Schools Act and share in the legislative grant, while still retaining their denominational characteristics—namely, the segregation of Roman Catholic children and sectarian instruction. The Roman Catholic school board, on the other hand, was willing to pledge not only that the Public Schools Act would be accepted for administrative purposes, but that the regular public school textbooks would be used, and that no religious instruction would be given during school hours. The thorny question as to whether any distinctive religious garb would be worn by Roman Catholic teachers also entered into the controversy, but on this point the petitioners were unyielding. In a letter, dated December 5, 1913, by Mr. James McKenty, appeared the following sentence, which is quoted as most accurately defining the position of the Roman Catholic committee: "It (the petition) amounts to a request that you take over our schools on a rental basis and conduct them as public schools for our Catholic children, and that for these schools you engage certified Catholic teachers without distinction as to garb."

An eminent legal authority, who was consulted by the city school board, expressed the opinion that, if the petition were made effective, such action would be in violation of the Public Schools Act as contravening those sections relative to sectarian instruction

and the segregation of pupils on a religious basis. On the other hand, it was maintained that denominational segregation had been made "legally possible by the Coldwell law"; in other words, the clause regarding segregation still found in the school act was to be considered virtually repealed!

As a result of these contentious amendments, the electorate of Manitoba was soon divided into two hostile debating camps. By an influential section of Orangemen both in the East and West it was maintained that the intent of the new legislation was to extend the privileges of Roman Catholics by creating a system of publicly-supported separate schools in towns and cities. Mr. Coldwell, himself an Orangeman, emphatically repudiated any such design on the part of the Legislature and pledged himself an unswerving opponent of any legislation aiming to restore separate schools. Originally, he maintained, the Amendments were not a political issue, but had been supported by both parties. Statements bewildering in their contradictions were uttered in the press, English and French, and public opinion, as usual under such circumstances, became moulded largely along religious and racial lines. His Grace Archbishop Langevin expressed the determination of the Catholic Church never to "accept the neutral school or neutral university," while Orangemen adhered firmly to their decision not to support any candidate for the Legislature unless he pledged himself to vote for a programme of educational reform, including the repeal of the Coldwell Amendments and the bilingual clause, as well as the enactment of a satisfactory compulsory attendance law.

Events moved rapidly in 1914. At a provincial Liberal Convention, held in Winnipeg on March 26th,

a series of resolutions were adopted, of which three pertained to education. By this resolution the Liberal Party pledged itself in favour of: national schools, obligatory teaching of English in all public schools, extension of the educational facilities of the Province, compulsory attendance, more liberal legislative grants to rural districts, and the repeal of the Coldwell Amendments. The summer electoral campaign, which was very bitterly contested, centred chiefly around the Coldwell Amendments, bilingualism and the temperance question. In Winnipeg the public school board remained firm in its decision not to take over the Roman Catholic parochial schools on the basis asked for in the petition, while the controversy over the import of the Amendments was waged with undiminished rancour. Prominent Roman Catholics, on the one hand, Orangemen and the Protestant clergy, on the other, were the protagonists in the wordy battle. On March 24, 1914, one hundred and fifty leading French Liberals pledged their support to any party that would restore Roman Catholic minority schools, promote the teaching of the French language, and provide for the establishment of French bilingual schools. To these representations Mr. Norris, Leader of the Opposition, reiterated his determination to maintain unimpaired the national school system, as modified by the Laurier-Greenway arrangement of 1897. The Orange Grand Lodge at its meeting in Regina emphatically declared for a repeal of the Coldwell Amendments, the annulment of the Laurier-Greenway Compromise, and the re-enactment of the Public Schools Act of 1890 in its original form. With reference to the hackneyed subject of the Amendments, the Lodge put itself on record in the following words: "The Clause, which makes every room a

school and gives the parents of forty Roman Catholic pupils the right to demand a teacher of their own faith, removes the one insuperable barrier which existed in the past to the operation of separate schools under the Public Schools Act."

The bilingual question also presented varied political complications owing to the large foreign vote. In a total population of 445,614 (1911 census) in the Province, there were reported to be 30,944 French-Canadians, 34,530 Germans and 39,665 Austro-Hungarians.

In 1915 Premier Roblin retired and Sir J. A. M. Aikins assumed the leadership of the Conservative Party. The Administration, however, was doomed, and in the midsummer elections the Liberals converted their narrow defeat of the previous year into an overwhelming victory. Conservatives and Liberals rose above party considerations and placed in power a government pledged to carry out a programme of thorough-going reforms. In the spring session of 1916, which is of great significance in the educational history of Manitoba, the Norris Administration proceeded to carry out the programme of reform to which it was committed.

Before concluding this discussion of Manitoba's sectarian school problems, reference should be made to the past and present status of the French language as compared with that of the English. Section 23 of the Manitoba Act, 1870, placed both languages on the same level from a judicial and legislative standpoint. Either French or English might be used by any member in the debates of the Legislature; the records and journals of the House were to be printed in both languages; either language might be used in the courts of the Province; and, finally, the acts passed

by the Legislature were to be printed both in French and English. In 1890, however, the government of Manitoba, while in the reforming spirit, abolished the use of the French language in the above respects and thus made English the sole official language of the Province. To appeals from French sympathizers, both in the East and West, the Dominion Government turned a deaf ear and refused to disallow. In the opinion of the Minister of Justice the question was one for the courts to decide, and not of a character justifying such drastic action as federal disallowance.

The following observations from Mr. Tarte's speech on the language episode (March 6, 1893, Hansard, p. 1766) indicated the general attitude of the French to the obnoxious legislation:

Where is the political man who will contend that the Manitoba Legislature had a right to abolish the French language? . . . They (the people of Manitoba) prevent us from speaking the French language in the Legislature and they do not want it to be taught in the schools. In a word they say to us: we are two against one; we abolish your language, not because you have no rights, but because we are stronger than you.

On January 28 and March 10, 1916, certain amendments to the Public Schools Act were adopted which dealt the death blow to the so-called Coldwell Amendments and to the bilingual system of instruction. The first of these amendments (Chapter 86) repealed Paragraph (s), Section 2 of the Act.¹ Subsection (1) of Section 252, providing for the employment of Roman Catholic or non-Roman Catholic teachers, as explained in the previous chapter, was left intact, but Subsection (2) of the above Section (part of the

¹ As previously stated, Paragraph (s) of Section 2 defined "school" as meaning any "school room or department in a school building owned by a public school district."

Coldwell Amendments of 1912) was repealed. Subsection (2) defined the expression "teacher" as meaning "A teacher for the children of the petitioners and of the same religious denomination as the petitioners." The third phase of the Coldwell Amendments was likewise repealed, namely, Section 137, which read as follows: "It shall be the duty of every public school board in this Province to provide school accommodation according to the requirements of this Act, when so requested by the parents or guardians of children of school age under this Act." Thus the practical effect of the January legislation (Chapter 86) was largely to revert to the conditions resulting from the adoption of the Laurier-Greenway Compromise in 1897.

Chapter 88, being "An Act to further amend 'The Public Schools Act,'" was assented to on March 10, 1916. The effect of this amendment was to go beyond the mere destruction of the Coldwell legislation and to revoke an important concession granted to the French and other non-English languages as a result of the so-called Laurier-Greenway Compromise. Section 258 of the Public Schools Act, providing for the bilingual system of instruction, was thereby repealed, and now English alone is the official language in all public schools of Manitoba.¹

"Some years ago," stated Hon. R. S. Thornton, Minister of Education for Manitoba, in the Legislature, January 12, 1916, "the school district of St. Francois de Salle, St. Norbert, was a French bilingual school. The Ruthenians began to settle in

¹ This statement of the case might be somewhat enlarged. At first it was probably intended to abolish only the *right* of non-English parents to compel the use of their language, and for the present at least the use of French, German, Ruthenian, etc., as media of instruction is allowed to continue as a *privilege*.

the district, and as soon as they had a majority at the annual meeting they secured control of the school board. They wanted to employ a Ruthenian bilingual teacher instead of a French bilingual teacher, and they had the necessary number of children, having some forty or fifty of school age. The French still had some fifteen children attending the school, and the two factions came to an agreement to build a two-roomed school, one room being operated as a French bilingual school, and the other as a Ruthenian bilingual school. A year or so later the French room was closed."

As Section 258 was mandatory, the words "*shall be conducted*" being used, the Department of Education was impotent in such cases. Hon. R. S. Thornton also stated that on June 30, 1915, there were 2,727 school departments in operation in Manitoba with a total enrolment of 100,963 pupils; of this number, 421 were bilingual schools (French, German, Ruthenian and Polish) with a total enrolment of 16,720, or approximately one-sixth of the total school population of the Province.

The right of the Roman Catholic minority to establish and support their private schools—a right enjoyed "by practice" prior to 1870 and confirmed by Section 22 of the Manitoba Act—cannot be legally invaded by any act of the provincial Legislature. The following section (Section 4, Chapter 97, assented to March 10, 1916), indicates the extent to which the government of Manitoba was prepared to go in the matter of private school inspection:

The department of education *may*, at least once in each year, *upon the request* of the board of trustees or the authorities in control of any private school, enquire into the qualifications of the teachers and the standard of education of

such school, and as often as such enquiry shall be made the department of education shall furnish to the said board of trustees or other authorities a written report of the result of such enquiry, and transmit a copy of such report to the school inspector and the school attendance officer of the school district in which such private school is situated.

It will be observed that this permissive legislation carries with it no suggestion that any private school requesting inspection, however efficient such school may prove to be, thereby becomes entitled to any government grant, whether of money or supplies.

CHAPTER VI

SEPARATE SCHOOL ISSUES IN THE NORTH-WEST TERRITORIES AND SASKATCHEWAN BEFORE 1913

NEXT to Manitoba the Province of Saskatchewan was probably the scene of the most bitter and protracted controversies over separate schools and language issues ever waged in Canada. During the provincial election of 1905, immediately following the creation of the Province, separate school issues provided the chief subject of acrimonious discussion in the course of a warmly contested political campaign. In the period 1913-1917, another bitter controversy, or series of controversies, over the distribution of the taxes of companies, as between public and separate schools, was carried on in the Legislature and the press of Saskatchewan. In the election of 1929 a further pitched battle over the wearing of the garb, distinctive of any religious sect, by teachers in public schools, as well as over the display of the crucifix or other religious emblems in the public schools of the Province, was waged. Since 1929 the status of the French language in the public schools of Saskatchewan has, much to the chagrin of French-Canadians in East and West, received an emphatic setback. These issues are discussed in the following pages and in Chapter Nine.

Prior to 1875 the North-West Territories did not have a separate constitution, and not until 1884 was a regular school system established. Settlers were few and isolated, hence no important educational problems required solution. By 1875, however, conditions had become such as to warrant the enactment

of a federal statute, the North-West Territories Act, Section Eleven¹ of which empowered the local council to pass all necessary ordinances relating to education, subject to the following proviso: "A majority of the ratepayers of any district or portion of the North-West Territories . . . may establish such schools therein as they may think fit, and make the necessary assessment and collection of taxes therefor; and further, that the minority of ratepayers therein, whether Protestant or Roman Catholic, may establish separate schools therein, and that, in such latter case, the ratepayers establishing such Protestant or Roman Catholic separate schools shall be liable only to assessments of such rates as they may impose upon themselves in respect thereof." Thus it is manifest that the N.W.T. Act of 1875 contemplated the establishment of separate schools with powers quite as plenary as those exercised by the separate schools of Ontario or the dissentient schools of Quebec at the present time or of Manitoba prior to 1890. From 1884 to 1892 such a system did exist in the Territories, and moreover the N.W.T. Act remained in force (but after 1892 not enforced) until superseded by the Saskatchewan Act of 1905.

The ordinance passed by the North-West Council on August 6, 1884, known as "An Ordinance providing for the Organization of Schools in the North-West Territories," established a system in which separate schools constituted an important element. A public school district was not to exceed thirty-six square miles, nor could it be organized unless four (or more) heads

¹The House of Commons, under the leadership of the Hon. Alexander Mackenzie, adopted the separate school clause of the Act after little discussion and less opposition by opponents of the Mackenzie administration. The separate school principle was apparently well established.

of families, with at least ten children between the ages of five and sixteen, resided within the prescribed area. Separate school districts might be organized out of one, two or more adjoining public school districts, a provision apparently considered necessary owing to the small number and sparse settlement of minority school adherents. Protestants and Roman Catholics were liable for taxes only to their respective schools; but, by an amendment passed in 1886, no owner of real property in any district was enabled entirely to escape taxation. Provision was made for religious instruction during the last hour in the afternoon, and, subject to the sanction of the trustee board, school might be opened with the Lord's Prayer.

One of the most important provisions of the Ordinance was that establishing a board of education, composed of two sections, one Protestant and the other Roman Catholic. Each section passed regulations for the conduct of its respective schools, prescribed the subjects of study and textbooks, and regulated such matters as the training, licensing and inspection of teachers. Thus the school system established in the Territories by the Ordinance of 1884 bore a very close resemblance to that existing in the Province of Quebec.

During the years that elapsed between the passing of this Ordinance and the reorganization of the system in 1892, several important amendments, tending to diminish denominational control, were passed. In 1887 all candidates for the teacher's licence were examined by a board of examiners composed equally of Protestants and Roman Catholics. The two sections of the board might still prescribe the texts in science and history or require any additional subjects from their own candidates; otherwise the subjects

of the examinations were identical. Four years later (1891) the Lieutenant-Governor in Council assumed control over the licensing of teachers and the appointment of inspectors for all schools of the Territories.

In 1892¹ and 1901 the Territorial Assembly passed ordinances (of doubtful validity) which radically curtailed separate school privileges and established, or rather substituted, a system in most respects identical with that existing in Saskatchewan at the present time. After the establishment of a public school district, a separate school district, Roman Catholic or Protestant, might be organized within the same area; in other words, the boundaries of the two districts were to be coterminous. Furthermore, uniform academic training and certification of teachers, uniform inspection, the use of uniform texts (with a few minor exceptions), and uniform examination standards applied to all schools receiving government aid. The Ordinance of 1901 placed the administration of all schools under the control of a commissioner of education, who was also a member of the executive council. The only remaining vestige of the former board of education, with its Protestant and Roman Catholic sections, was the Educational Council, composed of two Roman Catholics and three Protestants, whose powers were advisory only. Religious instruction, as directed by the board of trustees, might be given during the last half-hour of the day, but only to those children whose parents or guardians offered no objection. In addition, the use of the English language as the medium of instruction

¹ See Appendix I for Sir John Thompson's reasons for not disallowing the Ordinance of 1892.

Archbishop Taché, Mgr. Grandin, and Father Leduc affirmed that separate schools did not exist in the North-West Territories after 1892 except in name. This matter is somewhat fully discussed in Appendix I.

in the school was made compulsory, although provision was also made for the teaching of a primary course in French. The language question, however, will be discussed more fully in Chapter Nine.

Reference should now be made to another link in the educational chain; namely, the issues raised by the Saskatchewan Act of 1905.

For several years prior to the granting of provincial autonomy in 1905, the Territorial Premier, Hon. (now Sir) F. W. G. Haultain, made repeated representations to the federal authorities urging the necessity of proceeding immediately with the consolidation of the Territories into a single Province. Neither in the negotiations that passed between the two governments nor in the territorial and federal elections held in 1902 and 1904, respectively, did the separate school question become an issue. To Mr. Haultain the right of the new Province to complete control of its school system from the beginning apparently admitted of no question. His draft bill (prepared in 1902), relative to the proposed provincial constitution, would convey the impression that Section 93 of the B.N.A. Act should apply *in toto* to the new Province, but presumably he considered that the application of this section would not restrict the operation of provincial autonomy in the matter of school legislation. In certain sections of the country, moreover, it was alleged that the delay in conferring the provincial status upon the Territories was due to clerical dictation at Ottawa, which was reported to insist that provision be made in the proposed legislation for the establishment of separate schools in the new Province or Provinces.

When the autonomy acts providing for the creation of two Provinces, Alberta and Saskatchewan, were

introduced in the House, the school clauses, now contained in Section 17, proved the most prolific source of controversy. As originally introduced by Sir Wilfrid Laurier, these clauses provided that Section 93 of the B.N.A. Act was to apply to the new Provinces. The minority was to be guaranteed the right of establishing and maintaining separate schools, in which case they were not to be liable for any public school assessments; nor was there to be any discrimination between the two classes of schools in the appropriation and distribution by the provincial Legislature of school moneys. Sir Wilfrid maintained that the aim of the school clauses was simply to crystallize the existing law, as set forth in the School Ordinances of 1901, and that the type of separate schools contemplated by the bill was practically of a national character. The western members at Ottawa, however, were doubtful of the interpretation the proposed clauses might bear, should litigation, similar to that involved in the Manitoba School Question, arise. The new Provinces, it was admitted, were empowered to exercise such control over separate schools as the Ordinances of 1901 had warranted, but conditional upon the following ominous proviso: "subject to the provisions of the said Section 93 and in continuance of the principle heretofore sanctioned under the North-West Territories Act." The significance of this proviso will be more fully appreciated in the light of the discussion of the provincial election issues of 1905. It should be remembered in this connection that the principle sanctioned by the North-West Territories Act was consistent with the establishment of sectarian schools in the complete sense of the term, and furthermore, that the Ordinances of 1901, as infringing on the Act of 1875, were of doubtful validity. Unless,

therefore, the Territorial School Ordinances of 1901 were definitely confirmed by federal authority and reference to the Act of 1875 omitted, the case appeared precarious to the opponents of sectarian schools.

Early in March, 1905, Hon. Clifford Sifton resigned from the Cabinet¹ and a crisis within the government was but narrowly averted. Resolutions of protest were passed by various social, fraternal and religious organizations, while protracted debates followed at Ottawa.² Sectarian animosities rapidly assumed a threatening aspect. Happily a compromise was effected. An amended section, validating the Territorial Ordinances of 1901, was substituted for the contentious clauses proposed by Sir Wilfrid, and the political storm subsided.

On September 1, 1905, the Saskatchewan Act, providing a constitution for the newly-created Province, came into effect. Section 17 of this Act reads as follows:

"Section 93 of the British North America Act, 1867, shall apply to the said Province, with the

¹In stating his reasons for resigning (March 24, 1905, Hansard, page 3119) and the extent to which one is justified in compromising one's convictions to prevent a political crisis, Mr. Sifton spoke, in part, as follows:

"I do not think they (the Laurier Government) would be able to convince me that it would not be better that the Legislature of the North-West Territories should be free. . . . There is a certain distance I am prepared to go in the way of compromise. . . . To the extent which is embodied in the proposition before this House I am willing to go (i.e. To accept the amended section, the present school law). I am willing to go that far because I believe that the essential principles of a first-class, thoroughly national school system are not impaired, and the taint of what I call ecclesiasticism in schools, and which in my judgment always produces inefficiency, will not be found in the school system of the North-West under this legislation, unless the people of the North-West choose to have it, in which case it is their business and not ours."

²See Appendix I and the footnote at the end of Chapter One.

substitution for paragraph (1) of the said Section 93, of the following paragraph:

"(1) Nothing in any such law shall prejudicially affect any right or privilege with respect to separate schools which *any class of persons* have at the date of the passing of this Act, under the terms of Chapters 29 and 30 of the Ordinances of the North-West Territories, passed in the year 1901, or with respect to religious instruction in any public or separate school as provided for in the said Ordinances." Subsection (2), relating to the equitable distribution of school moneys, is quoted in full below. Subsection (3) enacts that the expression "by law," as used in paragraph (3) of Section 93, shall mean the law as set out in Chapters 29 and 30 above, and that the expression "at the Union," as used in paragraph (3) of Section 93, means "at the date at which this Act comes into force," i.e. September 1, 1905.

By comparing Section 93 of the British North America Act and Section 17 above, the significance of the education clause of the Saskatchewan Act will be readily seen. The rights and privileges of the religious minority, Roman Catholic or Protestant, in any district were defined and limited by the terms of Chapters 29 and 30 of the Ordinances of 1901, and thus such additional minority rights and privileges as had been enjoyed under the North-West Territories Act of 1875, or under any Territorial ordinances passed prior to 1901, were definitely excluded.

After the passing of the Saskatchewan Act, Mr. Walter Scott, Liberal member at Ottawa for the Regina constituency, was forthwith called on to form a government, and an intensely exciting election campaign followed, from which the Liberals emerged

victorious by a majority of seven (sixteen Liberals, nine Conservatives).

"Down with coercion" was the Opposition slogan. Why had the Liberal Party been so solicitous for minority rights in 1896 and yet so ready to exercise the hand of coercion in 1905? By the new Provinces alone, contended the Opposition, should all matters pertaining to education be decided;¹ and although the system crystallized by Section 17 of the Autonomy Act had proved quite satisfactory in the past, nevertheless it was asserted that this fact did not justify the federal government in infringing on the provincial domain.

Certain members of the Opposition also advanced the argument that the date of the Union was not 1905 but 1870—when the Dominion Government purchased the North-West Territory from the Hudson's Bay Company—and that, since no school system existed "by law" in 1870, it therefore followed that Section Eleven of the N.W.T. Act, 1875, would not be applicable to the new Province. Hence Saskatchewan could begin her career unrestricted by any constitutional entanglements or alleged obligations to separate schools.

In reply to the above arguments the Liberal Party pointed out that the B.N.A. Act of 1871 (Section 2) vested in the federal Parliament complete power to legislate with respect to "the constitution and administration" of future new Provinces on their being established out of unorganized territory and admitted to the Union. Furthermore, supposing a test case were successful and that Section 17 of the Saskatchewan Act were declared *ultra vires* of the Dominion

¹For important contributions to the discussion of the educational issues, see the extracts from Hansard, Appendix I; also Appendix II.

Government; in this event, it was alleged, Section 93 of the B.N.A. Act, 1867, would necessarily apply in its entirety to the new Province, and under this section there could be little doubt as to the school system legally in force. The problem for their Lordships to determine, in such case, would be: What school system was in force on September 1, 1905, in Saskatchewan if Section 17 were annulled? The N.W.T. Act of 1875 (a federal statute) would, it was argued, assuredly hold precedence over the Territorial Ordinances of 1892¹ and 1901, with the result that the Province would have thrust upon it a system of clerically-controlled, sectarian schools. In support of the contention that Section 93 would be applicable to the new Province,² under the circumstances stated, the recorded opinions of statesmen from 1867 to 1875, including that of Lord Carnarvon, who introduced the B.N.A. Bill at Westminster in 1867, were invoked by the advocates of the Liberal cause.

That the Union took place in 1870 was challenged as a most extravagant supposition. To assume that the following words of Section 93, "by law in the Province at the Union," would bear the construction, "by law in the uninhabited prairies in 1870 when the North-West Territory and Rupert's Land were acquired by Canada," rather than the presumably more natural meaning, "by law in force in the area at its union as a Province in the confederation of Provinces," i.e. in 1905—to assume that the former interpretation would be adopted by the Privy Council

¹"In my opinion there can be no doubt whatever that the legislation which has been passed in the North-West Territories, and which is now in force, has been somewhat at variance with the principles laid down by the organic law of 1874."—Sir W. Laurier, June 29, 1905, *Hansard*, page 8502.

²With reference to this point see the footnote at the end of Chapter One.

was, in the opinion of the Liberals, to take a desperate gambling chance from which disastrous consequences might ensue. Such, in outline, were the main arguments advanced by the two political parties in 1905.

Turning now to a consideration of the more strictly legal phases of the subject: With reference to matters of administration and assessment the state of the law is set forth in the following (Section 45, Cap. 29, 1901):

"After the establishment of a separate school district under the provisions of this Act, such separate school district and the board thereof shall possess and exercise all rights, powers, privileges, and be subject to the same liabilities and method of government as is herein provided in respect of public school districts.

"(2) Any person who is legally assessed or assessable for a public school shall not be liable to assessment for any separate school established therein." It was in connection with the import of this subsection that a bitter controversy, discussed in the following pages, was waged in Saskatchewan.

Notwithstanding the above provisions in the school act, the following question has frequently arisen: Was it contemplated by the framers of the constitution that the separate school, Roman Catholic or Protestant, since its existence was protected, should be an efficient institution on an equal footing with the public school? The answer appears to be in the affirmative. Section 45 of the Ordinances (already quoted), which was affirmed by Section 17 of the Saskatchewan Act of 1905, could scarcely convey any other impression, and the same is true of the several subsections of Section 93 of the B.N.A. Act discussed

in the first chapter. Subsection (2), Section 17, of the Saskatchewan Act reads as follows: "In the appropriation by the Legislature or distribution by the Government of the Province of any moneys for the support of schools organized and carried on in accordance with the said Chapter 29, or any Act passed in amendment thereof or in substitution therefor, there shall be no discrimination against schools of any class described in the said Chapter 29." No comment on the meaning of these words is necessary. Furthermore, the late Mr. Justice Anglin of the Supreme Court of Canada (in giving judgment *re* the Regina Case on appeal) used these words: "Equality of treatment and equal rights and privileges for public and separate schools would appear to be the spirit of the school law of Saskatchewan"; and the same opinion was expressed by the late Chief Justice Fitzpatrick.

To revert to the storm-centre of the controversy in Saskatchewan (1913-1917), the critical question at issue was the following: Did the individual ratepayer have, under Section 45 of the Territorial Ordinances and prior to the amendment of 1913 (since repealed), the option of supporting either the public or the separate school? The amendment respecting company taxation was also challenged and is considered in the following chapter. If no such option legally existed prior to 1913, the repealed amendment¹ relative to the destination of the individual ratepayer's taxes (Section 3, Cap. 35, January, 1913) was merely declaratory of the existing state of the law.

¹ The amendment in question (passed in January, 1913, and repealed in February, 1916) made it obligatory for all minority ratepayers—i.e. of the religious faith represented by the separate school—to support the separate school where such school existed; while all ratepayers of other denominations were obliged to support the public school.

The following considerations may throw some light on the import of the original Section 45:

(a) In certain published correspondence (see *Regina Leader*, January 18, 1916) that passed between Rev. A. A. Graham, of Moose Jaw, and Hon. J. R. Boyle, Minister of Education for Alberta (where the original Section 45 also applies), an opinion is expressed which directly contradicts the contention of the late Scott Government. The following question appears in Rev. Mr. Graham's letter: "If I were a Roman Catholic elector, living in any village in your Province where a separate school is established and in operation, would I have the option of supporting the public school if I chose to do so?" Under date of December 23, 1915, Hon. J. R. Boyle replied as follows: "Referring to your favour of the 17th inst., making inquiry regarding the interpretation to be placed upon assessment where both the public and separate school exist in the same district, . . . I may say that the Department of the Attorney-General of this Province has looked into this matter very carefully, and is of the opinion that reading together various sections of the Act, the intention is that there shall be perfect freedom of choice with respect to which school district the ratepayer shall become a supporter of." If this opinion were sound, "perfect freedom of choice" in this respect should also have existed in Saskatchewan.

It might be stated that the school law of Ontario specifically admits the "perfect freedom of choice" in the matter of school support as expressed by the Attorney-General for Alberta.

(b) On the other hand, there is the equally authoritative statement of ex-Premier Scott that, for a period of twenty years prior to the decision given by Judge McLorg in 1911, there was but one

opinion in the matter; and that opinion was crystallized in the amendment passed in January, 1913, which, accordingly, was only declaratory. Judicial decisions, departmental interpretations, and the common practice followed during two decades—all pointed, it was alleged, to the same conclusion. If the spirit of the school law in Saskatchewan was to be observed, the separate school must stand on the same footing as the public school; and hence it was never contemplated that the security for debenture indebtedness was to be at the mercy of the capricious and fluctuating type of ratepayer. The McLorg decision (see below), it was contended, gave rise to such a chaotic condition and possible conflict of opinion with respect to the state of the assessment law that it clearly became the duty of the Legislature to set out in unmistakable language the intent of Section 45—and hence the amendment (repealed in February, 1916) was passed.

(c) The McLorg decision of 1911,¹ as already stated, proved the cause of the legislation which threatened to divide the people of Saskatchewan into two hostile debating camps. To counteract the probable effects and alleged palpable defects of this decision, one of the amendments of 1913 was passed, and soon after a bitter controversy arose. It might be added that, while the amendments were under consideration in the Assembly, the Opposition offered no serious objection and the impression apparently prevailed on both sides of the House that the new legislation (except that applying to company taxation) was simply declaratory. Thus it can scarcely be said that the amendments had become a clearly-defined political issue, although the Leader of the Opposition

¹ See Appendix IV.

was reported to have made the public declaration prior to February, 1916, that, were the Conservative Party returned to power at the next provincial election, the offending legislation would be repealed. Certain leading Protestant clergymen, however, denounced the action of the Scott Government in no uncertain terms, nor did Premier Scott hesitate to measure swords with his adversaries. In the controversial letters appearing in the public press, frequent reference was made to the McLorg decision given September 14, 1911; hence the more relevant clauses of this decision should be noted.

The question at issue was whether certain Roman Catholic taxpayers of the town of Vonda, where both a public and a separate school were in operation, must necessarily be classed as supporters of the separate school rather than, if they so desired, of the public school. Judge McLorg based his opinion on Sections 279 and 293 of the Town Act. Subsection (4) of the latter section, which proved the deciding factor, reads as follows: "The assessor shall accept the statement of any ratepayer, or the statement made on behalf of any ratepayer by his written authority, that he is a supporter of the public school or the separate school, as the case may be, and such statement shall be prima facie evidence for entering opposite the name of such person, the letters P.S.S. or S.S.S. . . ." Commenting on the above subsection, the learned judge used, in part, the following words: "Now this section appears to me to contemplate that the option of supporting either school rests with the ratepayer. . . . It would have been the easiest thing in the world, had the Legislature intended it, to make a provision that Roman Catholics should be assessable to the separate school and Protestants to

the public school or vice versa. It could have been expressed in a few words, and I think, were I to give effect to the appellant's contention, I should be simply legislating, and legislating in a most drastic manner; I can conceive numberless reasons why the ratepayer should be entitled to choose the support of his school quite independently of any religious connection, distance, teaching and so on."

It will be observed, in the first place, that this opinion of a district court judge is based on two sections of the Town Act, rather than on Section 45 in dispute; furthermore, while Section 293 of the Town Act should be illuminating as expressing, in some degree, the intention of the Legislature with respect to the general question of school assessments, it is somewhat difficult to understand the process of legal reasoning from which the learned judge deduced his conclusion. It would appear, on the other hand, that Subsection (4) of Section 293 is strong evidence to the effect that the ultimate decision in the matter does not necessarily rest with the ratepayer—and the words "prima facie" seem to support this contention. In the great majority of cases the statement of the ratepayer would not be open to question; few ratepayers of the faith represented by the separate school would support, or desire to support, the public school. If the ratepayer's statement were protested, however, such statement was merely "prima facie" (not conclusive) evidence, and hence would be subject to revision by a higher authority; and if a higher authority was competent to decide, where was the ratepayer's option? Had the word "conclusive" been inserted, instead of "prima facie," no contested cases could possibly arise and the learned judge's decision would not be open to question.

(d) His Honour, District Court Judge A. G. Farrell, Moosomin, in a memorandum to the Department of Education,¹ dated January 25, 1913, stated from memory (no written judgment was given) the grounds underlying his decision in the case of a certain ratepayer, Farley, who appealed from the decision of the court of revision, refusing to enter his name as a separate school supporter. The case was heard in the summer of 1911, and for several years prior to this date Farley had been rated as a supporter of the Public School District of Lemberg, wherein the separate school in question is situated. The learned judge's decision was based on Sections 42 and 43 of the School Act, on Sections 88 to 94 of the School Assessment Act, and also on Subsection (4) of Section 293 of the Municipal Act. The inference to be drawn from this decision is that a Protestant, at least, has not the option of supporting the Roman Catholic separate school. To quote from Judge Farrell's memorandum: "I told him that if he became a member (*bona fide*) of the Roman Catholic Church I would place him on the separate school list, but not till then. He appealed again last year, but was no nearer being a Roman Catholic then than the year before."

(e) The case which brought this question to a head was *McCarthy v. the City of Regina*. Judgment was rendered by the Local Government Board, April 10, 1916, to the effect that "all resident ratepayers of a separate school district of the religious faith of the minority establishing the district should be assessed as separate school supporters whether they voted for such establishment or not."

Mr. A. Bartz, a Roman Catholic ratepayer of the

¹ See Appendix IV.

City of Regina, was assessed as a separate school supporter in 1915. Upon his written request he was assessed as a public school supporter for the year 1916, and on appeal to the court of revision this assessment was upheld. The case was then brought before the Local Government Board by Mr. McCarthy, appellant on behalf of Graton Separate School District, which is Roman Catholic.

By the respondent it was contended that, according to Section 41 of the School Ordinance¹ (now Section 39 of the School Act), only ratepayers who signed the petition for the establishment of a separate school, or, at most, those who voted in favour of such establishment, were liable for separate school taxation; and that in the case of the other ratepayers of the minority faith, as represented by the separate school, it was optional whether they supported the separate or public school. The appellant, on the other hand, contended that no choice existed, but that the test to be applied in all such cases was that of the religious faith of the ratepayer.

The Bartz Case was carried on appeal to the Supreme Court of Saskatchewan *en banc*, and on January 6, 1917, their Lordships handed down a practically unanimous judgment² confirming the decision of the Local Government Board. Without going to the Supreme Court of Canada, the Regina Public

¹ The minority of the ratepayers in any district, whether Protestant or Roman Catholic, may establish a separate school therein; and in such case the ratepayers establishing such Protestant or Roman Catholic separate school shall be liable only to assessment of such rates as they impose upon themselves in respect thereof." Subsection (2) of Section 45 of the School Ordinance (now Subsection (2), Section 45 of the School Assessment Act) reads as follows: "any person who is legally assessed or assessable for a public school shall not be liable to assessment for any separate school established therein."

² See Appendix IV for text of the judgment given by Chief Justice Sir Frederick W. G. Haultain.

School Board, with the approval of the Provincial Government, which offered to defray all expenses arising out of the appeal, decided to carry this case *per saltum* to the Judicial Committee of the Privy Council.

The gist of the Saskatchewan Supreme Court decision, later affirmed by the Privy Council, was to the effect that the minority in any public school district might secede for the purpose of establishing a separate school. but that such right of secession carried with it the obligation of stability in maintaining the separate school when once legally established. In other words, as ex-Premier Scott avowed, the minority ratepayer must support the separate school where such existed, while all other ratepayers were obliged to devote their taxes to the support of the public school. The religious affiliation of the ratepayer was held to determine the destination of his taxes whether he originally voted for the establishment of the separate school or not. Hence the Supreme Court judgment at least implied that there could be no public school embracing all classes of the community in those districts where separate schools were also established.

Two questions were involved in the appeal case before the Supreme Court of Saskatchewan: first, the validity of the decision given by the Local Government Board in the Bartz Case, which was confirmed; and, second, assuming the judgment of the Local Government Board to be a correct interpretation of the statutes, the competence of the Dominion Government to insert Section 17¹ in the Saskatchewan Act of 1905

¹ In so far as Section 17 gave the provincial Legislature power to enact legislation depriving the ratepayer of the alleged right to support either the public or separate school, or in so far as this section debarred the provincial Legislature from enacting legislation requiring all ratepayers to support the public school—to this extent Section 17 was challenged as beyond the competence of the Dominion Government.

was challenged. The latter point was not, however, strongly urged by the appellants.

Reading together the various sections of the School Act, the School Assessment Act, and the City Act pertaining to taxation for school purposes, Chief Justice Sir Frederick Haultain could not agree with the contention of the appellants that the following words of Section 39, i.e. "the ratepayers establishing such separate school," meant only the ratepayers voting for the erection of the separate school but not those voting against its establishment.

The relevant sections of the above acts were all alleged conclusively to point "to an intention of the Legislature to establish majority rule within a minority, either Protestant or Roman Catholic, establishing a separate school." Whatever option the ratepayer might have legally enjoyed prior to 1908 in the matter of supporting either school, Chief Justice Haultain held that the provincial legislation passed in that year, as re-enacted in 1915, placed the matter beyond all reasonable doubt. In a word, the "right or privilege with respect to separate schools" (Section 17, Subsection (1), Sask. Act, 1905) was held not to mean the right of the minority to pay taxes to the public instead of to the separate school, but rather the right "to establish a separate school and be liable only to taxation in respect thereof."

CHAPTER VII

THE SEPARATE SCHOOL SITUATION IN SASKATCHEWAN AFTER 1913: DISTRIBUTION OF COMPANY TAXES

THE question of the distribution of the taxes of corporations, as between public and separate school districts in Saskatchewan, gave rise to certain amendments to the school law which became the subject of bitter controversy both on the platform and in the press of the Province. So important was the matter at issue that it is deserving of somewhat detailed consideration.

Section 93 of the Ordinances (being Section 42, Cap. 25, S.S., 1915), relative to the taxation of companies holding property in village and town (including city) districts wherein separate schools are also established, provides that a company "*may* by notice in that behalf," given to the authorities specified in the section, require part of its real property subject to taxation to be assessed for separate school purposes only; "but all other property of the company shall be separately entered and assessed in the name of the company as for public school purposes." The section further provides that the portion of property to be assessed for separate school purposes shall bear the same ratio to the total property assessable as the paid or partly paid-up stock of the company, held by Protestants or Roman Catholics, as the case may be, "bears to the whole amount of such paid or partly paid-up shares or stock of the company." For instance, if one-third of the paid-up stock of a company were held by Roman Catholics, then one-third of the real property of such company would, if due notice

were given, be assessable for Roman Catholic separate school purposes, and the remaining two-thirds would be assessable for the purposes of the public school. But if notice were not given, all the property in question would be assessable for public school purposes only.

Hence, under Section 93, which is still on the statute books,¹ any company desiring to have a share of its taxes given to the separate school was required to give notice; but, according to the reasonable interpretation of the section, it was apparently intended that a company could not give valid notice unless at least one of its shareholders belonged to the faith represented by the separate school. Thus the companies contemplated by the law were of three classes. (The judgment of the trial judge, Brown, *re* Regina Public School Trustees vs. Graton Separate School Trustees, discussed below, is illuminating in this respect):

(a) Companies whose shareholders were all Protestants and whose taxes would be available only for public school purposes (assuming the separate school to be Roman Catholic); for, since no shares or stock were held by Roman Catholics, valid notice could not be given and therefore no portion of the taxes levied on the property could be devoted to the separate school.

(b) Companies whose shareholders were all Roman Catholics. Such companies could give notice requiring all their property to be assessed for separate school purposes (where the separate school was Roman Catholic); but, in the event of no such notice being given, all their taxes would be devoted to the public school.

¹ See Sections 58, 59, 60, Cap. 133, of the Saskatchewan School Law.

(c) Mixed companies, or those whose shareholders were partly Protestant and partly Roman Catholic. Companies of this class could give notice requiring a certain portion of their taxes to be devoted to separate school purposes, but if, as was frequently the case, no such notice were given, the public school again became sole beneficiary.

When the above Section 93 is regarded from an impartial standpoint, it is at once apparent to the average person that its provisions operated unfavourably with respect to separate schools. As Mr. Justice Brown significantly pointed out, there were two outstanding reasons why a company, especially of class (c), would not be likely to give notice. A company has no religious convictions to satisfy nor children to educate, and hence, while not indifferent as to the amount of its taxes, it would probably be so with respect to the mode of their distribution; and, in the second place, for business reasons a company would not be disposed to discriminate on a religious basis. The Regina Case (discussed below) well illustrates this point. Of the 159 companies whose taxes were in dispute, not one had given the notice specified under Section 93. To remedy this apparent defect the amendment known as Section 93 (a) was passed.

On January 11, 1913, Section 93 (a) (Section 3, Cap. 36, 1912-13) received the assent of the provincial Legislature. This section, which admittedly modified the law governing the assessment of companies (i.e. Section 93 already quoted) reads, in part, as follows:

"In the event of any company *failing to give a notice* as provided in Section 93 hereof, the board of trustees of the separate school district may give the company a notice in writing in the following form, or

to like effect, . . . " The form of the notice is then set out. Subsection (2) provides that "unless and until any company, to which notice has been given as aforesaid, gives notice as provided in Section 93," the taxes shall be collected by the public school district, whereupon the money so collected shall be divided between the public school and the separate school in shares corresponding to the ratio between "the total assessed value of assessable property assessed to persons other than corporations for public school purposes and the total assessed value of assessable property assessed to persons other than corporations for separate school purposes respectively." In other words, the taxes of corporations "failing to give a notice" were to be divided between the two classes of schools on the same basis as obtained with respect to the distribution of taxes paid by other persons (Roman Catholic or Protestant) in the district.

To illustrate: If notice regarding the distribution of its taxes were given by a corporation or company situated within a separate school district (and hence necessarily within a public school district), such notice would be in accordance with Section 93, and the taxes would be divided between the two classes of schools on the basis of the amount of paid-up or partly paid-up shares or stock held by Protestants and Roman Catholics, respectively, in the company. But if notice were not given by the company, there would not be sufficient information available to make the above scheme feasible, hence Section 93 (a) provided a new solution. The taxes of companies "failing to give a notice" were not, as formerly, to be available only for public school purposes, but the separate school was to receive its share. Assuming, for example, that "the total assessed value of assessable

property" assessed to Roman Catholic ratepayers (not including corporations) in a Roman Catholic separate school district were one-third of "the total assessed value of assessable property" assessed to all non-Roman Catholic ratepayers (not including corporations) in the district, then, under Section 93 (a), the Roman Catholic separate school would receive, if it gave the necessary notice, one-fourth¹ of the taxes collected from all companies (whether Protestant, mixed or Roman Catholic) "failing to give a notice" as set out in the old Section 93, and the balance of such taxes would go to the public school. It is assumed that, where the separate school is Roman Catholic, the terms "non-Roman Catholic" and "Protestant" are synonymous for the purposes of the Act, and vice versa where the separate school district is Protestant.

The second amendment pertaining to companies, 93 (b) (Section 14, Cap. 50, 1913), was assented to on December 19, 1913, and was presumably intended to remedy certain anticipated defects in 93 (a), which were later pointed out by a number of the judges of the Supreme Courts of Saskatchewan and of Canada. During the time the Regina School Case was before the courts, Section 93 (b) was on the statute book, but, not being retroactive, did not apply to the point at issue. The question arose as to whether "any company" included each and every company liable to assessment, which certain judges contended to be the case; on the other hand, it was asked, how could

¹ For every dollar going to the separate school three dollars would go to the public school. In other words, out of every four dollars collected, one dollar (one-fourth) would go to the separate school.

If Roman Catholics were assessed for one-third of the *total assessable* property in the district (excluding corporations) their share of company taxes would be one-third.

"any company" be interpreted to include those companies, none of whose shareholders was of the faith represented by the separate school, since such companies could not give valid notice under Section 93? Hence to speak of such companies as "failing to give a notice" was a superfluous use of language. Subsection (5) of Section 93 (b) was intended to overcome the above defect by providing that any company, whose shareholders are wholly Protestants or wholly Roman Catholics, may within a specified time file a duly verified statement to that effect with the clerk of the municipality, whereupon Section 93 does not apply to the company in question, but its taxes are to be applied wholly for public school or separate school purposes as the case may be.

Furthermore, an obvious defect in Section 93 (a) with respect to companies, such as the C.P.R., who could scarcely be expected to obtain a census indicating the religious faith of its shareholders, was remedied by the first four subsections of 93 (b),¹ which provide that any company may, within a specified time, notify the municipality "that it is practically impossible, owing to the number of shareholders and their distribution in point of residence, to ascertain the proportions of stock held by Protestants and Roman Catholics respectively." On the serving of the above notice and the observance of a few other simple matters of procedure, the company is not subject to

¹ According to a decision given April 3, 1917, by the late Honourable Mr. Justice Elwood (Western Weekly Reports, 1917, Vol. 2, page 565), "any company which has not given the notice required by Section 93 of that Act (i.e. The School Assessment Act) or has not complied with the provisions of Section 93 (b), is liable to be compelled to give a notice under Section 93 (a), and the results provided by Section 93 (a) for non-compliance follow."

"The notice provided for by Section 93 (a) must be given before the completion of the assessment roll."

the provisions of Section 93, but may direct the distribution of its taxes as it sees fit.

In the case, Regina Public School Trustees vs. Graton Separate School Trustees, the validity of Section 93 (a) was attacked.¹ Graton Separate School (Roman Catholic) is established within the Regina Public School District, and the issue giving rise to litigation was the fact that one hundred and fifty-nine companies, holding assessable property within the above district, did not give the notice specified under Section 93; whereupon each company was served with the notice set out in Section 93 (a). The Regina public school trustees contended that they were entitled to all the taxes collected, whereas the defendant separate school board claimed a share.

The case was heard before Mr. Justice Brown, before the Supreme Court of Saskatchewan *en banc*, and before the Supreme Court of Canada. Two questions were at issue: (1) the validity of Section 93 (a), and (2) whether the separate school board had the right to receive a portion of the taxes in question. The import of the judicial decisions was, in brief, as follows. With respect to the validity of Section 93 (a), the trial judge and the Supreme Court of Saskatchewan unanimously decided that this section was *intra vires* of the provincial Legislature. Two judges of the Supreme Court of Canada (Fitzpatrick, C. J., and Anglin, J.) also came to the same conclusion; two judges² (Davies and Duff, J. J.) expressed no opinion on this question; while one judge (Idington, J.) held that 93 (a) was *ultra vires*. In regard to the

¹ See Western Law Reports, Vol. 29, at pages 221 and 399; also Reports of the Supreme Court of Canada, Vol. 50, page 589 et seq.

² The import of the decision handed down by the Supreme Court of Canada undoubtedly branded Section 93 (a) as *defective* although only one justice specifically held the section to be *ultra vires*.

second question at issue, the Supreme Court of Saskatchewan (Newlands, J., dissenting) decided in the affirmative. Two judges of the Supreme Court of Canada (Fitzpatrick, C. J., and Anglin J.) also decided in the affirmative, while three judges (Davies, Duff and Idington, J. J., the latter of whom held 93 (a) *ultra vires* decided, in the negative. The judgment of the Supreme Court of Saskatchewan, awarding a share of the taxes in question to the separate school, was accordingly reversed. It should be remembered, however, that Section 93 (b) of the amendments, while on the statute book, was not applicable to the case at bar.

For an adequate understanding of the legal points involved it will be necessary to follow the main thread of the argument before the various courts.

(a) The learned trial judge, Brown (judgment dated May 16, 1914), admitted that Section 93 (a) would tend to operate prejudicially against the public school. Mixed companies especially, for reasons already stated,¹ were not likely to give the notice under Section 93; and whereas, formerly, if no such notice were given, all the taxes of the company were available for public school purposes, now, under Section 93 (a), a portion of the taxes of these companies must be handed over to the separate school. For this reason, however, it did not follow that Section 93 (a) was *ultra vires*. Section 17 of the Saskatchewan Act did not mean, it was alleged, "that no legislation shall be enacted in the interest of separate schools which prejudicially affects the public school or the public school supporter; it means, rather, that no legislation shall be passed which shall in any way curtail the rights or privileges which any class of persons have to

¹See page 84.

or in separate schools. In other words, *it is separate school protective legislation*, affording protection for, but not protection against, separate schools."

With regard to the significance of the words, "failing to give a notice," in Section 93 (a), the opinion of the trial judge practically coincided with the judgment of the majority of the Supreme Court *en banc* stated below.

(b) Supreme Court of Saskatchewan (July 15, 1914). Mr. Justice Lamont gave the judgment of the majority of the court. "A right or privilege," reads the judgment, "with respect to separate schools is some special right or claim belonging to, or immunity, benefit, or advantage enjoyed by a person or *class of persons* with reference to separate schools, over and above the rights enjoyed at common law or under statutory enactments by the inhabitants of the Province at large. *It is some private right or privilege as opposed to the rights possessed by the community.* It follows, therefore, that the only *classes of persons* who can have rights or privileges with respect to separate schools are those who, at the date of the passing of the Saskatchewan Act had the right, under the ordinances, of *establishing separate schools*, that is, the *minority* in any school district. The majority in a district under the ordinances had no rights with respect to separate schools, because the school of the majority, whether Protestant or Roman Catholic, in any district is always the Public School." In this connection it will be observed that the expressions "classes of persons" and "minority" are used as if practically equivalent in meaning. This interpretation was affirmed by the Privy Council in the Ottawa School Case, 1917.

With respect to the second point at issue, the

learned judge did not agree with the interpretation that the words of Section 93 (a) "in the event of any company *failing to give* the notice in Section 93" referred to "only such companies as under Section 93 could give the notice." The wording of the section was admittedly defective ("omitted" being suggested as a better term); nevertheless, considering the language used and the defect in Section 93 which 93 (a) was intended to remedy, the natural inference was that the Legislature contemplated giving the separate school the right to serve notice on "each and every company who failed to give a notice."

It is important to bear in mind the words of Section 93 (a) i.e. "*failing to give a notice*," since it was largely on the interpretation of this phrase that the appeal case before the Supreme Court of Canada turned. In this respect the finding of Mr. Justice Newlands (Supreme Court of Saskatchewan) was upheld. The above words, according to the learned judge, "could only refer to such companies as could give such a notice and failed to do so, that is, companies, some of whose shareholders were of the religious faith of the separate school. These words cannot, in my opinion, be applied to a company that could not give notice under that section. No such company could be said to have *failed* to give notice" The word "fail" primarily involves the idea of duty; hence, to speak of companies that could not give valid notice as "*failing to give a notice*" would scarcely be a consistent use of language.

(c) The Supreme Court of Canada covered much of the ground traversed by the lower court, hence only a few of the more significant passages from the finding of their Lordships are noted.

Mr. Justice Davies contended that, while Section

93 (a) was somewhat crudely drawn, its real meaning was clear, and the words "any company *failing to give a notice* as provided in Section 93," necessarily had reference "to such companies only as possessed the knowledge necessary to enable them to give the notice requiring the proportional division of their taxes and yet failed to give it. It could not have reference to companies in which none of the shareholders were of the 'same religious faith' as that of the separate school seeking the division of the taxes." Hence it could not have been intended "that companies not coming within Section 93 at all, and not having the knowledge requisite to give the notice, should have their taxes diverted from the public to the separate school as a penalty for not giving a notice they could not legally give."

With reference to the term "failing" used in Section 93 (a), Mr. Justice Anglin pointed out that this was not "the word most apt to express the intention of the Legislature," since it suggests the idea of omitting to discharge an obligation. However, in the learned judge's opinion, the expression "*failing to give*" might be interpreted to mean "*not giving*"; hence there was alleged to be no reason for holding that Section 93 (a) did not apply to all companies. The significance attached to the word "failing" throughout the argument is apparent from Mr. Justice Anglin's closing sentences: "Since the fact that no duty or obligation is imposed by Section 93 on any company precludes our treating the word "failing" as used in Section 93 (a) in what is, perhaps, its primary sense, viz., neglecting or omitting to discharge an obligation, I see no reason why we should not give to it a secondary meaning with which it is frequently employed,

especially when, by so doing, we can effectuate the apparent purpose of the Legislature."

In view of the fact that a prominent clergyman in Saskatchewan charged the government with having "manipulated"¹ the amendments after the decision of the courts was handed down, the fate of the expression "failing to give a notice" should be more fully investigated.

Certain verbal changes were made in the school law of Saskatchewan after the Supreme Court of Canada had given its decision. The chief amendments to the school law passed in January and December, 1913, are designated as follows: Section 3 of Cap. 35, which was incorporated in Section 45, Cap. 25, S.S. 1915; and Sections 93 (a) and 93 (b) which were incorporated as Sections 43 and 44, respectively, Cap. 25, S.S. 1915. A few minor verbal changes and one significant alteration of the wording of the original amendments are found in the consolidated statutes for 1915. The expression "may notify" (Section 93 (b)) becomes "shall notify" (Section 44, Cap. 25, 1915). In Section 3, Cap. 35, 1913, the word "hereafter" appears in the phrase "shall *hereafter* be assessable," from which the inference might reasonably be drawn that a change in the law was contemplated and, therefore, that the amendment was not merely declaratory.² In the corresponding Section 45 of the S.S. 1915, the word "hereafter" is omitted. These changes may have been made from the standpoint of literary form; in any event, it would require a stretch of the imagination to detect any ulterior purpose on the part of the Legislature in making them.

¹ The charge did not specify wherein the alleged "manipulation" consisted. See the *Regina Leader* of January 13, 1916.

² Ex-Premier Scott, as previously stated, contended that this amendment was only declaratory of the existing state of the law.

One verbal alteration, however, is deserving of careful scrutiny. It will be remembered that in Section 93 (a) of the amendments the words "*failing to give a notice*" are found; and in this connection the importance attached to the meaning of the word "*failing*," when the Regina Case was being argued before the Supreme Courts of Saskatchewan and Canada, need not be further considered. The corresponding section of the statute (Section 43, Cap. 25, S.S. 1915) contains the substitution, "in the event of any company *not giving* the notice." To maintain that the change made was in the nature of a coincidence or calculated to improve the literary form of the section would be a most extravagant assumption. There would appear, on the contrary, to be some ground for concluding that the wording was designedly changed to meet certain of the objections of the courts.¹ In reply to a charge that the government had "manipulated" the amendments subsequent to the finding of the courts, ex-Premier Scott declared (*Regina Leader*, January 13, 1916), "the last amendment to the assessment law was made in December, 1913," i.e. 93 (b) already referred to. One thing, at

¹ It might be argued that the verbal alteration was immaterial, since the defect in Section 93 (a) was remedied by Subsection (5), Section 93 (b). This position is open to question. There would appear to be ground for the contention that, if Section 93 (a) in its original form was defective, Section 93 (b), being supplementary and subsidiary to 93 (a) rather than an independent enactment, would also be equally void. By changing the words "*failing to give a notice*," the validity of the legislation was placed beyond all doubt. Moreover, it will be remembered that Section 93 (a) was passed in January, 1913, and Section 93 (b) in December, 1913. Apparently, however, the party or parties responsible did not consider Section 93 (b) sufficient to remedy the defect in 93 (a), as is evidenced by the fact that the change in the wording of Section 93 (a) (i.e. "*failing to give a notice*" changed to "*not giving the notice*") first appears in the Consolidated Statutes of 1915.

least, is certain: A significant change was made in the wording of Section 93 (*a*), and this change was necessarily made after December, 1913.

The issues raised in the Saskatchewan elections, 1929, are discussed in Chapter Ten.

CHAPTER VIII

THE SEPARATE SCHOOL SITUATION IN ALBERTA

PRACTICALLY all that has been written in the two previous chapters regarding the constitutional background and administration of separate schools in Saskatchewan holds equally true with reference to the separate school system of Alberta. Only a few lines of divergence between the school laws of the two Provinces are discernible. Before September 1, 1905, when the autonomy acts were passed, all public and separate schools in the area (the North-West Territories) now constituting the two Provinces were subject to the same school ordinances (Chapters 29, and 30, 1901) and departmental regulations. Since 1905 the educational policies adopted by Saskatchewan and Alberta have been as nearly identical, with probably one important exception mentioned below, as local conditions appeared to warrant. Section 17 of the Alberta Act is identical with the corresponding section of the Saskatchewan Act, and thus the sister Provinces set out upon their provincial careers subject to the same federal heritage with respect to separate schools.

In actual operation since 1913, however, the school system of Alberta has, in comparison with that of Saskatchewan, been singularly free from sectarian and political strife. Separate school and language issues, such as periodically disturbed the political life of Saskatchewan in the last twenty years, have made little appeal to the electorate of Alberta who, temporarily at least, appear to have buried their sectarian

animosities along with the election arguments of the political campaign held in the autumn of 1905.

After the passage of the Alberta Act in 1905, Hon. A. C. Rutherford (Liberal), of Edmonton, was called on to form an administration, while Mr. R. B. Bennett,¹ Calgary, was chosen leader of the Conservative forces. In the ensuing electoral campaign the arguments already discussed in connection with Saskatchewan issues formed the chief stock in trade. By the Liberals the terms of the Alberta Act were defended on the ground of their alleged splendid liberality. The political stability of the Province and the development of its resources could not be secured, it was maintained, until racial and religious agitation was allayed and the policy of promoting litigation for political ends was given its quietus by an overwhelming vote of the electorate. The leader of the Conservative Opposition was also accused of being the representative of the C.P.R. monopoly² and the subservient advocate of corporate interests. The Conservatives, on the other hand, energetically attacked Section 17 of the Autonomy Act and demanded that the Province should be given complete control over its educational system from the beginning. If the party were elected to office a test case to determine the validity of Section 17 was promised. The Conservative candidate in Edmonton was reported to have gone even so far as to propose the abolition of separate schools; nevertheless, although this constituency was strongly Protestant, he was defeated by a majority of 693, the largest majority obtained by any candidate in the Province. Separate school privileges to the limited extent sanctioned by the

¹ Now Rt. Hon. R. B. Bennett, Prime Minister of Canada.

² Mr. Bennett was C.P.R. counsel in Calgary.

territorial ordinances, and affirmed by Section 17 of the Alberta Act, were enthusiastically endorsed by the electorate as preferable to an alleged policy of litigation which, it was asserted, had nothing to offer but a legacy of racial and sectarian rancour.

Only six separate schools existed in Alberta in 1905 (there are seventeen now); hence the situation in the Province was not considered serious. In the fall of 1905 there were five¹ separate schools in Saskatchewan, three Roman Catholic and two Protestant (there are twenty-nine separate schools now), out of a total of approximately 850 districts for the Province. It will be remembered that the law of both Saskatchewan and Alberta provides that a public school district must first be organized before a corresponding separate school can be established and that the boundaries of the two districts shall be coterminous. The following words of Hon. J. A. Calder, Minister of Education for Saskatchewan, were perhaps equally applicable to conditions in Alberta. "There are scores, yes, probably hundreds, of such (namely, public school) districts," said Mr. Calder in the fall of 1905, "in which the majority of ratepayers are Roman Catholics."² Yet, it was asserted, no attempt had been made in these cases to establish separate schools.

The result of the elections held November 9, 1905, meant an overwhelming victory for the Rutherford Government. Only two Conservatives were elected in the twenty-five constituencies of the Province, while Mr. Bennett, Leader of the Opposition, was defeated in Calgary by a margin of twenty-nine votes. Premier Rutherford also expressed the opinion that

¹ Canadian Annual Review, 1905.

² Ibid.

the Liberal Party had secured seventy per cent. of the total vote cast throughout the Province.

From 1905 to 1910 no important separate school legislation was passed in Alberta. In 1910, however, the Legislature adopted certain amendments to the school assessment law pertaining to the distribution of the taxes of corporations between separate and public schools, respectively,¹ and these amendments were copied by the Legislature of Saskatchewan in January, 1913. The litigation arising from this action on the part of the Saskatchewan Legislature has already been discussed, and it is obvious that the decision of the Supreme Court of Canada would be applicable in Alberta should the amendments of 1910 be contested. The contentious words, "in the event of any company *failing* to give a notice . . . ,"² have not been changed by the Alberta Legislature (as was done in Saskatchewan)² in order to bring the subsection containing them into stricter conformity with the finding of the Supreme Court.

In one other respect, perhaps, the Legislature of Saskatchewan has manifested a more radical disposition in the matter of drawing a line of demarcation between the two classes of school supporters than has been evinced by the Legislature of the sister Province. As already stated, the amendment to Section 45 of the school law in Saskatchewan, passed in January, 1913, removed any alleged option on the part of the individual ratepayer to support either the

¹ See Subsections (5) and (6), Section 9, Cap. 105, Office Consolidation of the N.W.T. Ordinances in force in Alberta, 1915. See Section 60 of the present School Assessment Act in Alberta.

² No change has been made at the time of writing; nor has a clause equivalent to Subsection (5), Section 93 (b) (already referred to in connection with the Saskatchewan legislation) been inserted in the Alberta law to overcome the defect in the words "failing to give a notice."

public or separate school. No such amendment was passed in Alberta nor did the Attorney-General of the latter Province concur in the interpretation given to Section 45 by the Scott Government. The Saskatchewan amendment in question was repealed in February, 1916, and Section 45 (see Section 22 of the Alberta School Law) now reads the same in both Provinces. It will be remembered that, according to the decisions of the Local Government Board and Supreme Court of Saskatchewan, discussed in Chapter Six, the religious faith of the ratepayer determined the destination of his taxes, whereas, in Alberta, "perfect freedom of choice"¹ to support either school was alleged to prevail. Such an anomalous state of affairs has been clarified by the decision of the Privy Council upholding the interpretation of the Supreme Court of Saskatchewan with respect to the above contentious section of the school law. "Perfect freedom of choice," as explained in Chapter Six by the Attorney-General for Alberta, must therefore be regarded, in a strictly legal sense, both in the latter Province and in Saskatchewan, as a myth, though such freedom is an actuality in Ontario.

The law in Alberta governing the distribution of company taxes between separate schools and public schools is, as already stated, substantially the same as in Saskatchewan, i.e. on the basis of the "paid or partly paid-up shares or stock of the company" held by Roman Catholics or Protestants as the case might be. If, however, the company in question neglects to specify the distribution of its taxes, as between the above two classes of schools, then such distribution ordinarily takes place on the same basis

¹ See Chapter Six, page 74, correspondence between Rev. A. A. Graham and Hon. J. R. Boyle.

as obtains with respect to the division of taxes paid by other taxpayers (Roman Catholic or Protestant) in the district. In the city of Edmonton, Alberta, for instance, the separate school assessment amounts to about one-seventh of the total assessment. Non-designated taxes are accordingly distributed between the separate and public schools in the ratio of one-seventh and six-sevenths. The same practice governs the distribution of non-designated taxes in Saskatchewan.

CHAPTER IX

LANGUAGE ISSUES IN THE PRAIRIE PROVINCES

AS STATED in Chapter One, language and religious issues are, in the minds of many French Canadians, inseparably related. In fact, it is no exaggeration of the intimacy of this alleged relationship to say that the perpetuation of their religious faith is, from the French Canadian standpoint, primarily dependent upon the efficient safeguarding of their language *privileges* in the elementary school. The term, *privileges*, is used advisedly. Outside of the Province of Quebec at least, there are no intrinsic constitutional or legal *rights* pertaining to the use of the French language in state-supported schools. It will be remembered that in the Ottawa School Case (see Chapter Ten) the claim was advanced on behalf of the Roman Catholic minority in Ontario that the use of French as the language of instruction in separate schools, attended by pupils whose mother tongue was French, was a "right or privilege with respect to denominational schools," and hence not subject to invasion by the provincial authorities. This contention, however, was rejected by the Privy Council. The above widespread attitude or conviction on the part of French-Canadians, derived from a traditional intermixture of language and religious elements in their educational and nationalistic outlook, explains to some extent their persistent and quite natural endeavour to resist all alleged attempts to relegate French to a place of secondary importance in the state-controlled education of French-speaking children. In Manitoba and Saskatchewan, at any rate, if to a

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lesser degree in Ontario, the protagonists of French, as the co-equal with English in the lower grades of the publicly-supported school, appear to have been championing a lost or dying cause.

In the language disputes that embittered the political struggles in the Prairie Provinces, particularly during the last two decades, many clichés were glibly repeated both by political speakers and the partisan press of the day. One cannot read the history of this period without frequently running across such hackneyed expressions as the following: racial fusion, intelligent democracy, united and intelligent Canadian citizenship, loyal Canadians, patriotic Britishers, national unity, social solidarity, racial prejudice, religious tolerance, civic bitterness, class antipathy, tyranny of the majority, social misunderstanding, and so forth. Political orators of the day usually reached the climax of volubility in their set speeches by proclaiming the public school as the great national "melting pot" into which all diverse racial elements had to be placed (by persuasion or otherwise) and from which, it was confidently expected, would eventually emerge the "pure gold of Canadian citizenship."

The language situation in Manitoba was discussed in Chapters Four and Five. It will be remembered that, by virtue of the Manitoba Act of 1870, French and English were made official languages in that Province. In 1890, however, French lost its official status in the proceedings of the provincial Legislature as well as in the schools of Manitoba. It will also be remembered that by means of the famous Laurier-Greenway Compromise of 1897 an attempt was made to placate the many racial elements in Manitoba by enacting that: "When ten of the pupils in any school speak the French language, or any language other

than English, as their native language, the teaching of such pupils *shall* be conducted in French, or such other language, and English, upon the bilingual system." This mongrel provision in the school law was repealed in 1916. Fortunately no other Province had the temerity to pass such an amendment which ultimately, if not repealed, would have converted Manitoba into a polyglot Province.

The advocates of bilingualism in Manitoba, nevertheless, were not to be rebuffed by what they hoped was only a temporary reverse. Even as late as 1922 these foes of the one-language, national school system carried on a determined campaign to restore the non-English languages, and especially French, to the earlier status under the Compromise of 1897. Those responsible for the repeal of the bilingual privileges granted by this Compromise were roundly accused of "fanaticism" and intolerance. The following extract from one of the most enlightened and fearless newspapers of the day gives a good summary of the language situation in Manitoba immediately prior to the provincial elections of 1922, as well as of the attitude to this burning question of many reputable citizens:

Manitoba has had six years of experience with the present law. The people have a very lively recollection of the conditions which prevailed before the present law was enacted, and a return to those conditions is certainly not desired by the people.

This is not a matter involving the proscription of any language. The law involves no reflections upon any language. It merely takes cognizance of an actual condition of affairs; that, things being as they are, there can be only one language of instruction in the primary schools of Manitoba.

It is not a question of bilingualism. If we had in Manitoba only two races and two languages some adjustment might be possible. It is a choice between one language as

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the language of instruction in our primary schools or multilingualism. When the change was made in 1916 there were at least five languages officially recognized as languages in which primary instruction should be given. It was known that recognition would be demanded in the near future for other languages as well.

The people of Manitoba are not to be beguiled with fancy theories as to the possibilities of giving primary instruction in a number of languages. They have had their experience and they know the facts. They know that under the conditions which prevail throughout Manitoba only one language can be employed as a language of instruction in the primary schools. It is hardly necessary to say that, this being the case, the language of instruction must be English.

Under multilingualism the language used in any particular school would be decided by the predominance in the district of the ratepayers speaking that particular language. Under this system, in one school district Ruthenian would be the actual language of instruction; in the next it would be Polish; in the next German; in the next French; and in the next English. Yet in each district there are mixtures of people. In one district English children would be getting most of their instruction in Ruthenian; in another French children, being in the minority, would be instructed in German; and so on.

The result would be a hopeless mix-up, with a tendency to drive out from each school district all the racial minorities, with the result that Manitoba would be a veritable checker-board of racial groups, French, English, German, Scandinavian, Ruthenian, Polish, Russian, alternating.

These were the conditions which were being developed under the former school system. They were checked by the adoption of the present law. Under its operation every child in this Province is being given primary education in English. It will not be denied that a knowledge of English is indispensable to every person in this Province and it is, therefore, the clear duty of the state to see that every child in this Province is given a knowledge of English. The State is imparting this instruction in the only way possible, by making English the language of instruction in our primary schools.

Both the Provinces of Manitoba and Saskatchewan inherited a legacy of trouble in connection with language teaching in the private schools of certain Old Colony Mennonites, situated near Morden and Gretna in Manitoba and in the Swift Current and Saskatoon districts in Saskatchewan, who traced their charter of liberties to a Federal Order-in-Council passed August 13, 1873. Clause 10 of this Order (P.C. 957) reads as follows:

"That the Mennonites will have the fullest privilege of exercising their religious principles and educating their children in schools, *as provided by law*, without any kind of molestation or restriction whatever." By Clause 1 of this Order the Mennonites were also exempted from military service—a privilege recognized by the federal authorities during the Great War.

By virtue of the above Clause 10 the Mennonites insisted upon German, as the language of instruction in their schools, to the practical exclusion of English. Their religion, it was alleged, could be adequately taught only through the medium of the German language.

The first clash in Manitoba between the Mennonites and provincial authorities arose in 1907, when the government of the day enacted legislation making it compulsory for all public schools to fly the Canadian flag. On account of their religious scruples the Mennonites refused to comply with this order, whereupon those of their schools that were classed as public reverted to the status of private schools, which were not entitled to any government grant. By 1913 the majority of these schools recanted, flew the flag, and again joined the class of public schools, thereby becoming entitled to provincial aid.

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In 1916, when the Manitoba Government passed the School Attendance Act and also made the teaching of English compulsory in all schools of the Province, these Mennonite schools again reverted to private status. The government on this occasion, however, forced the issue whereupon the Mennonites claimed exemption by virtue of the Order-in-Council mentioned above. For several years litigation on the matter dragged through the provincial courts and the Supreme Court of Canada and eventually reached the Privy Council. On July 30, 1930, their Lordships dismissed the application of the Mennonites for leave to appeal from the adverse judgment of the Manitoba courts.

The legal questions at issue were never in serious doubt and the Mennonites were ill-advised to have pressed the issue. In the first place, Clause 10 of the Order-in-Council granted exemption only "as provided by law," which obviously could be none other than the provincial law. Under Section 93 of the B.N.A. Act, the Legislature of the Province can "exclusively" make laws appertaining to education, and hence any attempt on the part of the Dominion to invade the provincial field would have been null *ab initio*. It should have been abundantly clear to the legal advisers of the Mennonites that the Order-in-Council of 1873 had only a moral significance. This moral obligation was respected by the federal authorities in exempting the Mennonites from military service in 1917. Assuredly, however, there was no moral obligation on the part of the Manitoba Government to permit the children of certain deluded, if conscientious, zealots to be deprived of an elementary knowledge of the English language. The moral obligation in the latter instance was undoubtedly of the opposite nature. Under the circumstances of the case one

might almost venture the surmise that these recalcitrant Mennonites had apparently been pampered and spoiled by the aggregation of politicians in power in Manitoba immediately prior to 1916.

The Mennonite situation in Saskatchewan closely resembled that in Manitoba. Seventeen private Mennonite schools in the Swift Current district, and ten such schools in the district north of Saskatoon, insisted on the concessions embodied in Clause 10 of the Federal Order-in-Council of 1873 and adopted an attitude of passive resistance both in the matter of attending the public school and of learning the English language. Hon. W. M. Martin, Premier and Minister of Education (now Hon. Mr. Justice Martin of the Saskatchewan Appeal Court), refused to resort to strong-arm methods of coercion, but with commendable foresight and almost inexhaustible patience adopted a policy of tolerance and enlightened firmness which finally won over all but the hopelessly obdurate old-colony reactionaries. With persuasive directness Premier Martin brought home to the people of Saskatchewan their responsibilities in the great project of Canadianization.

During the years 1915 to 1920, a number of extremists among the Mennonites adopted a most defiant attitude in flouting the provincial School Attendance Act. In certain of the more glaring instances where this deliberately uncompromising attitude of hostility to the law was adopted, fines were imposed and often proved effective in cases where kindness and exhortation had made little appeal.

The policy of Premier Martin, as reported in an address to the citizens of Swift Current, is expressed in the following words:

"These people are here," said Mr. Martin, "and they are going to remain. It is folly to talk of having them deported in large bodies. They have been here a long time and while they are deluded in thinking they have special privileges in Saskatchewan over other citizens, at the same time we have got to use reasonable toleration in our treatment of them. It may take some time to do it, but we are bound to make good Canadians out of them in the long run. Just how soon that glad day will come about depends to a large extent upon the earnestness with which the Canadians, contiguous to the settlements, set out to assist the government in its projects along these lines."

It can scarcely be denied, however, that the decisions of the courts in the Manitoba litigation also had a salutary effect in overcoming the opposition of the Saskatchewan Mennonites to acceptance of the public school as well as to having their children learn English.

Of a much more serious and persistent character than the Mennonite school difficulties in Saskatchewan has been the perennial question of the status that should be accorded French as a language of instruction in the primary grades of the state-supported school whether public or separate. Reference is made in Chapter One to the historic and moral claims that might be advanced on behalf of the French language. In Appendix III also appears a discussion of the French language question in the Prairie Provinces in the light of its historic and legal setting. In 1930 the Anderson Government in Saskatchewan wiped out the use of French as a language of instruction in Grade I of the elementary school. This was undoubtedly the most drastic curtailment since 1916 of the use of French in the state-supported schools of Western Canada. Even yet the repercussions of the Anderson amendments are noticeable in Quebec and other sections of Canada.

Considerable light is thrown on the moral claim of the French language to recognition in the North-West Territories by the debates in the House of Commons, February, 1890. By Dominion legislation passed in 1878 the Territorial ordinances were to be printed in French and English which, accordingly, were both recognized as official. In 1890 Mr. Dalton McCarthy introduced a bill in the federal House, the effect of which would have been to make English the sole official language in the Territories. Speaking to this bill, Sir John A. Macdonald used, in part, the following words:

I believe that it (the suppression of the French language) would be impossible if it were tried, and it would be foolish and wicked if it were possible. . . . Why, Mr. Speaker, if there is one act of oppression more than another which would come home to a man's breast, it is that he should be deprived of the consolation of hearing and speaking and reading the language that his mother taught him. It is cruel. It is seething the kid in its mother's milk.

Mr. Laurier, speaking to the same bill, February 18, 1890, struck a tone characteristic of his utterances on the Lapointe resolution mentioned in Chapter One:

"Any policy which appeals to a class, to a creed, to a race, or which does not appeal to the better instincts to be found in all classes, in all creeds, and in all races, is stamped with the stamp of inferiority." In each of the antagonistic elements there was, said the speaker, "the common spark of patriotism," and to this alone must any true policy appeal. "It is imperative for us French Canadians to learn English," continued Mr. Laurier, "but . . . if I were to give any advice to my Anglo-Canadian friends, it would be that they would do well to learn French, too."

Similar opinions were expressed in eloquent terms by Mr. N. F. Davin, Sir Richard Cartwright and others, while Sir John Thompson brought the debate to a close by moving the following amendment, which was carried by a vote of 149 to 50: "That the Legislative Assembly of the North-West Territories should receive from the Parliament of Canada power to regulate, after the next general elections of the Assembly, the proceedings of the Assembly and the manner of recording and publishing such proceedings." In 1892, on motion of Mr. (now Sir Frederick) Haultain, seconded by Mr. Tweed, English became the sole official language for the recording and publishing of the proceedings of the Legislative Assembly of the North-West Territories. For a further discussion of this question the reader is referred to Appendix III.

According to the Territorial Ordinances of 1892, all schools of the North-West Territories were to be taught in the English language, but it was "permissible for the board of any district to cause a primary course to be taught in the French language." This section still stands in the school law of Alberta (Section 184). The latter law also contains the following sections (18 and 19):

Subject to the provisions of Section 184 of *The School Act*, the board of any district may employ one or more competent persons to instruct the pupils attending school in any language other than English. Such instruction shall be given between the hours of three and four o'clock in the afternoon of such school days as may be selected by the board and shall be confined to the teaching of reading, composition and grammar. The textbooks used shall be those authorized by the Minister of Education.

In any school in which only a part of the pupils in a class receive instruction in a foreign language it shall be the duty of the teacher in charge to see that the remain-

ing members of the class are profitably employed while such instruction is being given.

Some years ago the Minister of Education in Alberta undertook to define what shall constitute a primary course in French, and the teaching of French is now authorized in certain schools of that Province. It is obvious, however, that any incoming Minister of Education in Alberta can re-define what is meant by a primary course in French, and hence the language question in Alberta apparently rests in a condition pregnant with possibilities of future trouble. On the other hand, it might be surmised that the French of Alberta, in the light of recent events affecting the status of the French language in Saskatchewan, will probably hesitate to project any language issues into the arena of political or public discussion. As a matter of fact, the Alberta educational authorities have treated the French minority most generously, and it would be regrettable if language fanatics or sectarian bigots were to do anything prejudicial to the present harmonious relations that characterize the administration of the school system of Alberta. For it is obvious to the impartial observer that language animosities, as well as separate school differences, have remained relatively dormant in Alberta. Reference to the bitter political and sectarian battles waged in Manitoba and Saskatchewan (as discussed in several of the previous chapters) will amply justify the above statement.

Up to 1930 the language provisions of the school law of Saskatchewan were substantially the same as those already discussed in connection with Alberta. Before 1930, Subsection (2) of Section 196 of the Saskatchewan school law read as follows:

In the case of French-speaking pupils, French may be

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used as the language of instruction, but such use of French shall not be continued beyond Grade I, and in the case of any child shall not be continued beyond the first year of such child's attendance at school.

In 1930 the above subsection was deleted from the school Act, and Section 196 now reads as follows:

(1) English shall be the sole language of instruction in all schools, and no language other than English shall be taught during school hours.

(2) When the board of any district passes a resolution to that effect, the French language may be taught *as a subject* for a period not exceeding one hour in each day as a part of the school curriculum, and such teaching shall consist of French reading, French grammar and French composition.

(3) Where the French language is being taught under the provisions of subsection (2), any pupils in the school who do not desire to receive such instruction shall be profitably employed in other school work while such instruction is being given.

It is obvious, therefore, that French has lost its former equal status with English as a language of instruction in Grade I. French may now be taught "as a subject" in Grade I, as in the other grades, but "for a period not exceeding one hour in each day." Previously it was permissible to use French "as the language of instruction" in Grade I for practically the entire day.

Subsection (2) above may be subject to some ambiguity of interpretation in the case of ungraded schools. Does the expression, "for a period not exceeding one hour in each day," refer to each grade distributively or to all grades combined? The words "as a part of the school curriculum" would scarcely suggest that the course in "French reading, French grammar and French composition" should be the same for Grade I as, for instance, for Grade VIII.

Assume that an ungraded school in a French rural community contains Grades I, III, V and VIII. It is obvious that these grades, if taught efficiently, would not take the same prescription of work in French or in geography or arithmetic or the majority of other subjects "as part of the school curriculum." Nor would the above grades be taught or recite together. The curriculum in the modern school, it is assumed, should be adjusted to the mental levels and achievements of the pupils. Grading is introduced in the school chiefly to effect this purpose. Hence it is not ordinarily considered good pedagogical practice to group Grades I and VIII, for instance, for purposes of instruction, whether in French or any other subject. In the above illustration, two or three major groupings of the four grades specified might reasonably be made; but it is difficult to see the pedagogical justification for fewer than at least two such groupings. On the other hand, if an hour daily were devoted to instruction in French in the case of each grade in the ungraded school mentioned above, it is obvious that the teacher in charge would have little time left to cover the balance of the curriculum including English language, literature, grammar, composition and so forth. Furthermore, in teaching the French language "as a subject" it is sound psychological procedure to adopt the so-called direct or oral method according to which French, as the "language of instruction," should be used.

According to the latest report of the Federal Bureau of Statistics, "about three per cent. of rural pupils and four per cent. of urban receive daily instruction in French under this provision (Subsection (2) above) throughout the Saskatchewan elementary school course."

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It is scarcely correct to say that French as a "language of instruction" has been abandoned in the state-supported schools of Saskatchewan. The point left in doubt under Subsection (2) above appears to be whether French may be taught for only one hour a day to all grades collectively of the ungraded school or whether each grade or class is entitled to one hour a day of French instruction. Under the latter interpretation French might easily monopolize the ungraded school curriculum. In either case, French probably would and, if efficiently taught, undoubtedly should, be the "language of instruction."

Provision has also been made in Saskatchewan for the official inspection of private schools. Section 121 of the School Act, conferring such authority, reads as follows:

(1) The governing body of every college, school or other educational institution not being a school as defined by The School Grants Act shall, when required by the minister, furnish to the department a return in such form and giving such information as the minister may prescribe with respect to the pupils, teachers, curriculum and equipment of the college, school or educational institution.

"Under this section," writes the present Deputy Minister of Education for Saskatchewan, "our school inspectors inspect all private school classes up to and including Grade VIII. High school grades are inspected upon request. I am of the opinion that all private secondary schools have requested inspection. This is provided free of cost. The Chief Inspector informs me that private schools throughout the Province are following our new curriculum, and are endeavouring to maintain the same standard of efficiency that is found in our public schools."

A second amending Act passed by the Saskatchewan Legislature in 1930 contains the following clauses (in substance), which indicate the policy of

"Thorough" in language matters adopted by the Anderson Government:

5. All school meetings shall be conducted in the English language, but the chairman shall, if necessary, provide for the attendance of an interpreter for the benefit of those who cannot understand English.

6. Each person nominated for the office of trustee shall be a resident ratepayer of the district who is able to read and write and to conduct school meetings in the English language, and shall make and subscribe the declaration of naturalization and take and subscribe the oath of allegiance.

6a A new subsection (according to a statement of the Deputy Minister) provides that the foregoing shall not apply to a person who has held the office of trustee at any time prior to the date upon which the section comes into force, if such person, prior to his nomination, obtains a certificate from the school inspector for the district that such person is otherwise qualified for and is capable of performing the duties pertaining to the office of trustee.

In the judgment of the writer, these provisions were considerably overdue in Saskatchewan, and the Anderson Government is to be commended for having boldly seized the nettle, even if, in certain respects, some of the above amendments may be difficult of enforcement.

In conclusion it may be said that political and sectarian opponents may accuse the Anderson Government of fanaticism or autocracy in some of its school legislation. In the judgment of certain observers the section, discussed in a later chapter, excluding, practically without reservation, the sectarian garb from the public school, may not have been indicative of a high degree of statesmanship. Others may scent evidences of intolerance in the ban placed upon French as a language of instruction in the state-supported school. Still others may suspect that within recent years certain activities of the Orange

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Order have not been entirely divorced from Saskatchewan politics. Whatever elements of truth, if any, these allegations may contain, it cannot be denied that Premier Anderson has grappled with the difficult problems confronting his department in a fearless and vigorous manner that has won the admiration of those citizens who profess allegiance to the non-sectarian, one-language, state-supported, common school.

CHAPTER X

SEPARATE SCHOOL ISSUES IN ONTARIO

CERTAIN statements that have received the sanction of age and common usage are frequently regarded as belonging to the class of axioms. Undoubtedly these statements do contain a certain element of truth. They should not, however, be considered as universal or unchanging truths. Examples such as the following may be cited: "Murder will out," "Bread is the staff of life," "The good die young," and other clichés of similar antiquity. Statements such as the above are now regarded largely as myths which have been discredited by modern science as well as by modern incredulity and common sense.

The somewhat delicate question, as to whether Ontario still remains the "Banner Province of Canada" in certain of the major fields of human endeavour, arises at this point. For instance, is Ontario still the educational leader among the Provinces? Or is the "Banner Province" designation, from the standpoint of present-day educational leadership, just another cliché? Some of the ablest schoolmen in Ontario challenge this claim to prefferment on the part of their Province. All unprejudiced Canadians, however, admire the perhaps unrivalled contribution that Ontario has made to the moral, industrial and educational interests of the Dominion. This most populous and highly industrialized Province has supplied leaders in practically every field of human endeavour; and the same statement is at least proportionately applicable to the Maritime Provinces.

Yet it is alleged that in certain respects, including even the field of public education, Ontario is no longer entitled to the "banner" distinction. No Province may reasonably aspire to a permanent monopoly of leadership in any major field of social enterprise. Indeed, within recent years, according to a study made by an American investigator,¹ who based his conclusions on data supplied from official Canadian sources, from the standpoint of efficiency the school system of Ontario now ranks in second place among the Provinces. The writer ventures no opinion on the validity of this study, which, at best, must be regarded as provisional and incomplete. Based on criteria chiefly of an economic and social nature, it did not include such vital matters, for instance, as teacher training and school curricula in relation to modern industrial and social needs.

As already stated, in the judgment of certain leading Ontario educators, their Province was rightfully dispossessed by the above study and the logic of events in the past twenty years of its former distinction as the "Banner Province" in the field of publicly-controlled education. Over-centralization under the Provincial Department of Education, with resultant bureaucratic tendencies in matters of school control; alleged passive resistance on the part of many schoolmen and school officials to modern developments in educational theory and practice; tendencies to obscurantism manifested by the official mind; the inefficiency of the small board of school trustees;

¹ *An Educational Index for the Provincial School Systems in Canada.* By Carl Anthony Anderson: A thesis submitted to the Graduate Division of the University of California. This thesis involved eight criteria rated on a ten-point scale. Mr. Anderson had taught school in several provinces of Canada.

economic waste inevitably resulting from small district organization in the more thickly settled rural (including village) areas; and, in particular, the growing influence of separate schools—these were the chief items in the indictment of the Ontario school system offered the writer by a number of teachers and laymen who professed to be quite intimately acquainted with its operation. The writer does not suggest that the above indictment would receive widespread acceptance in Ontario or even that, in the main, it should be considered valid. Indeed, from the standpoint of both gross and *per capita* expenditures on public education—assuming that the Province receives the highest value for the money spent—it would appear that Ontario should still maintain its former undisputed title to educational preferment. Moreover, as part of the provincial system, which may or may not lower the average of educational efficiency, separate schools of Ontario may also lay claim to a share of the above distinction. As stated in Chapter Two, nearly 110,000 pupils, or approximately seventeen per cent. of the total school enrolment in 1931, were registered in Ontario separate schools which receive provincial aid on practically the same basis as the public schools.

In the following table *Publicly Controlled Schools* include public, separate and high schools; also courses in technical and vocational schools and normal schools. In computing enrolment students in preparatory courses (not of university standard) at universities are omitted. The data appear in the Report of the Dominion Bureau of Statistics (*Annual Survey of Education in Canada, 1931*). Comparable conditions are found in the five Provinces listed on opposite page.

**ENROLMENT AND EXPENDITURE ON EDUCATION, 1931
FOR FIVE PROVINCES**

	Ontario	Manitoba	Sask.	Alberta	B.C.
1. Publicly Controlled Schools:					
(a) By Provincial Governments	\$5,598,878	\$1,310,587	\$2,763,904	\$1,593,995	\$3,287,277
(b) By Ratepayers, etc	56,376,213	9,152,892	14,141,651	10,961,070	6,226,661
2. Universities and Colleges	\$9,142,104	\$1,934,577	\$1,238,121	\$1,304,645	\$1,013,050
3. Total Cost of Education	\$71,117,195	\$12,398,056	\$18,143,676	\$13,859,710	\$10,576,988
4. Number of Students (Total)	841,309	165,832	238,425	173,031	131,155
5. Population, 1931	3,431,683	700,139	921,785	731,605	694,263
6. Cost of Education Per Student	\$84.33	\$74.76	\$76.10	\$80.10	\$80.26
7. Per Capita Cost of Education (For Population of Province)	\$20.72	\$17.71	\$19.68	\$18.95	\$15.16

Costs of educational administration, school inspection, private schools, Indian schools, business colleges and similar enterprises and institutions do not appear in the above table. The costs of universities and colleges represent total expenditures. Part of this amount is met by students' fees. The above figures, however, give a fairly reliable estimate of comparative costs to the taxpayer of publicly-controlled education—elementary, secondary and higher—in the five Provinces where comparable conditions exist. In a few instances it was found impossible accurately to segregate costs or to avoid duplicates in estimating enrolment. These instances, however, are of minor importance and do not appreciably affect the total result. While the Western Provinces have probably been more affected than

Ontario by the prevailing economic depression, it appears obvious that the latter Province is, from the standpoint of expenditures on public education, still entitled to the distinction of being rated the Banner Province of the Dominion. At the same time, the question whether Ontario receives the greatest educational value from its expenditures on education or not is quite another matter.

While the writer refrains from offering advice in the matter, it is probable, from the points of view both of economic administration and educational efficiency, that Ontario could effect considerable gains by adopting the larger unit, township or county, of school administration. School surveys as well as practical experience have established the fact beyond reasonable doubt that the small, three-trustee unit of administration, as found in rural Ontario and other parts of Canada, is one of the most potent factors contributing to educational and economic waste in a publicly-controlled school system. Particularly is this statement true of the more thickly populated rural (including village) areas.

According to information received from a number of leading schoolmen and trustees in Ontario and the Prairie Provinces, the influence of separate school supporters—along with the usual stock of specious arguments regarding local interest, initiative and pride in school affairs alleged to be engendered through local control of the "little red schoolhouse" or its lineal descendant—has tended to delay the adoption of the larger unit of school administration. Whether the separate school influence in the above connection has proved unduly conservative, or whether such influence has been used as an excuse for official inertia in the matter of reorganization, is a matter on which

the writer is not in a position to pass judgment. One aspect of the situation, however, is not open to serious doubt. The rural counterpart of the small-town outlook in matters of school administration has done much to retard educational progress in many sections of Canada. Moreover, it is also probable that Ontario's traditional preferment as the Banner Province of Canada in the field of public education would be greatly enhanced if small boards of trustees in its more thickly settled rural areas were obliged to yield place to the proposed township, or preferably to the county, board. Mere permissive legislation as an alleged attempt to solve the problem appears little more than a pseudo-democratic gesture of the timid politician who either is indifferent to the facts of the case or is willing to condone inefficiency and waste in school administration rather than temporarily lose the rural support.

As the cultural centre of the Dominion, it seems incredible that Ontario should for long remain satisfied with its mid-Victorian vehicle of school control, namely, the petty board of school trustees in thickly populated rural areas. In isolated areas, where pioneer conditions still prevail, the small district with its three-trustee board may prove to be the most feasible instrument of school organization and management. Moreover, if the separate school is an obstructing influence, it should not be permitted to prejudice the educational interests of the majority. As was made abundantly clear by the judgment in the Tiny Township Case, discussed below, as well as by the Barrett and Brophy cases discussed in Chapter Four, matters of school organization and control cannot be legally considered as prejudicially affecting the rights or

privileges of a religious minority with respect to denominational or separate schools.

Only in comparatively few instances might the large unit of school administration in rural (including village) areas appear applicable to separate school districts. In these cases permissive legislation might be advisable. Some opposition to the larger unit might be encountered in rural public school districts fairly evenly divided along denominational lines or in which Roman Catholics were in the majority and hence capable of dominating the local school board. It is naturally to be expected that such districts would object to merging their powers in the larger township, or county board. Such mixed districts, however, as well as those with small pupil enrolments, should derive distinct economic and educational advantages from being merged in the larger administrative unit.

While, according to information supplied the writer, sectarian influences hostile to township or county organization of elementary education were alleged to exist in a number of the rural, including village, districts of Ontario, it should be remembered that the larger unit of school administration is not primarily concerned either with the abolition or retention of denominational influences in the public school. The question involved here is fundamentally that of reducing financial waste and of promoting educational efficiency.¹ If the separate school in Ontario or elsewhere stands in the way of the attainment of the above ends, it should, as previously stated, be obliged to stand aside. The natural desire of opportunist politicians to indulge the caprices of school

¹ See Chapter Twelve for data given by Hon. G. H. Ferguson.

trustees can be no justification for tolerating economic and educational waste. Probably, however, the parochial-minded trustee and taxpayer of rural Ontario, rather than the separate school, are the chief obstacles to the adoption in that Province of the larger unit of administration.

The above apparent digression naturally emerges in the discussion of Ontario's alleged educational preferment as the Banner Province of Canada. Many Protestants in various parts of Canada challenge Ontario's claim to this distinction on the ground that its separate schools constitute a serious divisive influence in our national life. Not a few schoolmen and members of the laity regard Ontario's rural school organization, with its cumbersome horde of near-sighted trustees zealously exercising their petty local authority, as both antiquated and inefficient. Still others, including a respectable proportion of Orangemen, trace the majority of non-progressive or alleged obscurantist influences in the Ontario school system to the presence of the "mediaeval denominational school," which, however, as fixed by the constitution, they resignedly accept as a necessary evil. The latter, notwithstanding their acceptance of the inevitable under Section 93 of the British North America Act, still vigorously resist all attempts of the separate school to better its financial condition through acquiring a larger share of the taxes of corporations and public utilities or to extend its curriculum and influence by annexing high school courses of study and sharing in the high school grants.

Toronto, the Mecca of Orangeism in Canada, as well as the rallying-ground for the protagonists of free speech, is rapidly becoming world famous both as a health centre and for the excellence of its educational

facilities. The visitor to Toronto on July 12, who had the opportunity of listening to the impassioned utterances of certain Orange orators, might well wonder how Roman Catholic separate schools could possibly exist in such an environment. Yet these schools not only exist but flourish. So long as they remain within the law there are apparently no attempts at suppression, no Glencoe massacres, such as the uninitiated might expect would befall the unwary Romanist who ventured forth without protection on July 12th. For the Orangemen of Toronto and of Ontario at large are, as a body, reasonably tolerant, even if their pet aversion be the alleged undesirable influences of the separate school.

An analogous remark might be made of the Anglophobes of Chicago, the city of relative anarchy as compared with cultured and law-abiding Toronto. The writer had a July 4th experience in Chicago that bore a rather striking similarity to a July 12th illumination in Toronto. In the former city he listened to a frenzied patriot, originally from Erin, who, in a sulphurous outburst of July 4th oratory, denounced King George III and all his grasping and arrogant minions and descendants. Eight days later in Toronto he heard an equally impassioned orator denounce all papal pretenders and separate school agitators who sought to undermine the "solidarity" of Canada's national school systems. In both cases there was a barrage of words. In neither case was there anything like close fidelity to historical accuracy. Nor were any casualties reported even as a result of the Chicago salvo. In neither case did the orator of the occasion probably mean half of what he said. Indeed, from a psychological standpoint these verbal outbursts

appeared to serve as desirable escape mechanisms for pent-up emotions and prejudices.

Fortunately, however, Ontario's preferment as the Banner Province of Canada rests on a more stable foundation than the occasional fulminations of July 12th oratory. Indeed, the writer has been privileged to listen to exceedingly able Orange orators whose message might well be pondered by the short-sighted opponent of the so-called neutral or "Godless" school. The national school need not be "Godless." Nor can its defenders be justly accused of adopting a position of neutrality in matters of public education.

In the following discussion the words—"common," "public," "elementary," and "national," as applied to the school—are used interchangeably. Such promiscuous usages are customary in Canada outside of the Province of Quebec. It may be advisable, therefore, to obtain a clear idea of the scope and function of the elementary school. An authoritative statement of the case appears below:

"It is the purpose of the elementary school," states Professor Bonser, of Columbia University. "to provide experience in meeting the common needs of all, regardless of sex, vocation, or social status. Its content is made up of those activities in which every one must participate with a like degree of knowledge and skill and with like attitudes and appreciations, in order that there may be unified, efficient and stable social life. Its activities, values and ideals may be regarded as the common denominator of life for the whole nation."

In other words, elementary school education ends at the high school entrance level, which corresponds to the completion of the common school grades at the average age of thirteen or fourteen. British Columbia would probably include the Junior High School Grades (VII, VIII, IX) with the "common denomina-

tor of life for the whole nation" as defined above by Professor Bonser.

A general knowledge of the historical development of separate schools in Upper Canada should serve as a useful background for an understanding of the present separate school situation in Ontario as well as of the issues culminating in the Tiny Township Case of 1927, which, in the words of Viscount Haldane, involved a question of a "very serious" nature and one of "far-reaching magnitude."

The origin of separate schools in the Province of Upper Canada (Ontario) may be traced in principle to an Act of the United Legislature passed in 1841, although the term "separate" was not applied to these schools until two years later. Before 1841 the only publicly-controlled schools established in Upper Canada were known as "common" and "grammar" schools. The term "public" appears in an Act passed in 1807; but by an Act of 1816, setting up local boards of education with powers to regulate the schools then in operation, the title, "common" schools, was restored. Although they made provision for moral and religious instruction, these schools appear to have been unsectarian. At the time of Confederation, therefore, there were three main classes of schools in Upper Canada; namely, common schools, grammar schools and separate schools. Since 1867 high schools and collegiate institutes, as well as continuation schools, have come into existence. The latter schools represented a change largely in nomenclature and organization rather than in the curriculum content of the pre-Confederation schools. Continuation schools, in their present form, were established under statutes passed in 1896 and 1908.

One of the most important Acts in the history of

Ontario education was that passed in 1871, which transformed the grammar and common schools. By the Grammar Schools Act of 1853 instruction in the latter schools was to extend to the higher branches of practical English and commercial education. Elementary physics as well as classics and mathematics, sufficient for admission to the university, were also included in the grammar school curriculum, which, therefore, in a general sense, was the logical ancestor of the post-Confederation Ontario high school. At the same time there was no clear line of division between the curriculum of the grammar school and the courses that might be offered in the upper forms of the common school, which, in certain cases, also taught the more advanced work necessary for university entrance. The same statement also applies to separate schools, which enjoyed privileges analogous to those possessed by the common school. Under the Upper Canada Common Schools Act, Section 16 (1859), both common and separate schools were left free to educate students up to the age of twenty-one.

Moreover, separate schools, while permitted to exercise many privileges in matters of grading and curriculum, were nevertheless subject to the regulations of the provincial educational authorities, whose mandates "might from time to time alter and define the work in the common (including separate) schools." The general effect of the Act of 1871 was, according to the contention of the Roman Catholic minority, to merge the grammar schools in a new class designated as "high schools," while the common schools became known as "public" schools and confined their instruction largely to the elementary or pre-high school grades. After the Act of 1871 the high schools appear to have been taken over by the former boards of

grammar school trustees and to have been administered "with the aid of the old grammar school grant and of contributions from local revenues by the municipal authorities." In the Tiny Township Case, discussed below, the Roman Catholics claimed to be exempt from taxation for these high schools which were alleged to be little other than an extension or division of the pre-Confederation common schools and not to affect the status of the separate school, as defined by the Acts of 1855 and 1863 (see below), either in matters of taxation or curricula. According to this contention, which was rejected by the Judicial Committee of the Privy Council, the separate school was not merely "a special form of the common school" but enjoyed a distinct legal existence under the terms of the above separate school acts.

Probably the two most important pre-Confederation acts, with respect to separate schools passed by the Legislature and Council of United Canada, were the so-called Taché Act of 1855 and the Separate Schools Act of 1863 which has been described as the "charter of the denominational schools." By the first of these acts separate schools for Roman Catholics were placed on a new basis. Trustees, as bodies corporate, were to administer these schools and were empowered to collect taxes from separate school patrons to the same extent and on the same principle as applied to common schools. Likewise both classes of trustees were committed to the performance of similar official duties and were subject to similar governmental regulations. An important provision of the Act of 1855, contained also in later separate school acts, exempted separate school supporters for the current year from taxes for future common schools and common school libraries. Separate schools were

to share with the common schools in the school fund, annually appropriated by the Legislature, in proportion to the average attendance at each class of school. The division of grants was to be determined by the Chief Superintendent of Education (at that time Dr. Egerton Ryerson) on the basis of information supplied by the trustees.

By the Separate Schools Act of 1859 it was enacted that "the trustees of each separate school shall perform the same duties and be subject to the same penalties as trustees of common schools." It will thus be seen that the provincial educational authorities kept a close rein on each class of school. Furthermore, there is no evidence to show that these powers of regulation and control were ever abdicated.

The Separate Schools Act of 1863 was in effect in Upper Canada at the time of Confederation. "Its declared purpose," stated Viscount Haldane in delivering judgment in the *Tiny Township Case*, "was to restore to Roman Catholics in Upper Canada certain rights in respect of separate schools and to bring the law respecting separate schools more into harmony with the law respecting common schools." So long as they remained supporters of separate schools, and not for the current year only, as under the earlier statute of 1855, Roman Catholics were to be exempt from paying taxes for common schools and common school libraries. Local assessments for separate school purposes were immune from invasion by the common school. Section 26 of the Act empowered the Chief Superintendent of Education to direct such inspection of separate schools as might be considered advisable, while these schools were to be "subject also to such regulations as might be imposed from time to time by the Council of Public

Instruction for Upper Canada." Teachers of separate schools were subject to the same regulations regarding examination standards and certification as applied in general to common school teachers.

Much of the confusion in thought regarding the rights and privileges of pre-Confederation separate schools appears to arise from the somewhat ill-defined academic and administrative status of these schools as well as from the excessive overlapping in the curricula of separate, common and grammar schools—any or all of which might offer instruction in the more advanced courses required for university entrance or admission to the normal school. An analogous situation, however, exists in other Provinces to-day where certain public or elementary schools in outlying areas make an attempt to provide secondary school instruction for pupils unable to attend high school. This is a natural phase of educational pioneering and was by no means peculiar to pre-Confederation Upper Canada. Moreover, the matter of secondary instruction under the above conditions obviously is subject to regulation by the provincial authorities and can scarcely be considered as a "right" pertaining to any class of persons. Similar confusion, as explained below, also existed with regard to the financial terms of the pre-Confederation school statutes. In the light of the contentions of the Roman Catholic minority (Tiny Township Case discussed in the latter part of this chapter) it is important to observe that by none of the above pre-Confederation statutes did the Province of Upper Canada relinquish any of its powers to control such matters as grading, curricula, limitation or extension of courses, textbooks, inspection and supervision,

examinations and qualifications of teachers with respect to separate schools.

Section 20 of the Separate Schools Act, 1863, governing the distribution of provincial grants as between separate and common schools, proved to be one of the most contentious provisions of the statute. This section reads as follows:

Every separate school shall be entitled to a share in the fund annually granted by the Legislature of this Province for the support of common schools, and shall be entitled also to a share in all other public grants, investments and allotments for common school purposes now made or hereafter to be made by the Province or the municipal authorities, according to the average number of pupils attending such school during the twelve next preceding months, or during the number of months which may have elapsed from the establishment of a new separate school, as compared with the whole average number of pupils attending school in the same city, town, village or township.

One of the duties of the Chief Superintendent of Education under Section 106 of the Upper Canada Common Schools Act, 1859, was to apportion "All moneys granted or provided by the Legislature for the support of common schools in Upper Canada, *and not otherwise appropriated by law*, to the several counties, townships, cities . . .," according to ratio of population. The recent claim of the Roman Catholic minority (Tiny Township Case, 1927) to a share in the grants for high schools rested on the interpretation of the above two sections to which further reference will be made in the following pages. The significance of the words, "not otherwise appropriated by law," proved to be one of the nice points in the interpretation of the contention advanced before the courts by counsel for the Roman Catholic minority.

Reference should be made at this point to a

number of the main features of the present separate school law of Ontario. This law (Separate Schools Act) is largely a consolidation and extension of the previous statutes. As already mentioned, Ontario possesses Protestant and "Coloured" as well as Roman Catholic separate schools. Teachers in these schools are, in the main, "subject to the same examinations and receive their certificates of qualification in the same manner as public school teachers." The provincial educational authorities also exercise administrative and academic control over separate schools—including such matters as inspection, curricula, prescribed texts, teachers' contracts, holidays, superannuation of teachers and so forth—as in the case of public schools. Obviously the exercise of the above control must not run counter to Section 93 (1) of the British North America Act, or prejudicially affect the rights or privileges of Roman Catholic minorities "with respect to denominational schools" as enjoyed by law in Upper Canada in 1867.

All separate schools are exempt from the payment of rates "imposed for the support of public schools and public school libraries" and are also entitled to "share in the legislative public school grants in like manner as a public school." On the other hand, separate schools are not entitled to "share in money raised by municipal assessment for public school purposes." Under Section 76 of the present Separate Schools Act, these schools also share in all municipal grants or allotments "for public school purposes" in the ratio of "the average number of pupils attending the school during the next preceding twelve months, or during the number of months which may have elapsed from the establishment of a new separate school, as compared with the whole average number of

pupils attending school in the same city, town, village or township." A Protestant separate school may be established in any section only "when the teacher of the public school in such section is a Roman Catholic." In 1931 there were five Protestant separate schools in Ontario with a total attendance slightly in excess of three hundred.

In Ontario, with the exception mentioned below, as well as in Saskatchewan and Alberta, the first section or district established is always the public school district. A separate school may later be organized within the above area if a sufficient number of Roman Catholic heads of families reside therein. In unorganized townships of Ontario, however, and in any part of Ontario not surveyed into townships, at least ten Roman Catholic heads of families may elect three of their number as school trustees "who shall have all the powers of public school boards in unorganized townships" and be subject to the provisions of the Separate Schools Act.

Separate school trustees in Ontario are, in general, clothed with the same authority and charged with the same administrative duties as are public school trustees. The former are obliged to provide "adequate accommodation and legally qualified teachers" for all children, between the ages of five and twenty-one, of separate school supporters. The separate school board may also adopt the old method of appointing collectors of "school fees and rate bills"; or it may arrange to have all sums for the support of separate schools levied and collected, as in the case of public schools, through the municipal councils.

While all public school districts in Ontario are free to resident pupils between the ages of five and twenty-one, the board of separate school trustees may legally

collect school rates and "subscriptions" from separate school supporters. Hence these "subscriptions" fall in practically the same category as taxes. The provision of the statute regarding "subscriptions," however, is reported to be infrequently enforced, as it would probably be resented by all but the more ardent Roman Catholics. Moreover, under Section 60 of the Separate Schools Act, a qualified avenue of escape is available for separate school ratepayers who may wish to become public school supporters only. To effect such transfer the ratepayer in question must give notice in writing to the clerk of the municipality "before the second Wednesday in January in any year." Under a second clause of Section 60, however, such exemption will not apply with respect to rates imposed for the support of separate schools and separate school libraries or for the erection of a separate school building "before the time of his withdrawing such support." An analogous provision in Section 54 applies to Roman Catholics who become supporters of a separate school established in their municipality and claim exemption from taxation for the public school which they were obliged to support until the separate school was organized.

The justice of the above restrictions is scarcely open to serious doubt. No citizen should be entitled to evade responsibility for the payment of a debt partially contracted on his behalf. In the first place, a Roman Catholic taxpayer to the public school is not obliged to transfer his support to a separate school afterwards established in the same section or municipality. Nor should he be permitted to escape liability for his share of the debt contracted through the prior erection of the public school building. The case with respect to the supporter of the Roman Catholic

separate school, who desires to transfer his allegiance to the public school, is obviously a parallel one.

The Ontario law in the above particulars stands out in marked contrast with that of Saskatchewan (See Chapter Six) where the destination of the ratepayer's taxes is determined by his religious faith. In Saskatchewan, for instance—and legally also in Alberta—a taxpayer of the Roman Catholic faith must support the Roman Catholic separate school if he resides in a district where such school is established. The only means whereby he could escape this obligation would be to renounce or change his religious affiliation. It would be necessary for him to become a non-Roman Catholic if not a Protestant. In such event he would, on observing certain formalities of the law, become a supporter of the public school only.

Hence it is manifest that the separate school law of Ontario in the matter of optional support, as between the public or separate school, is as liberal as that of Saskatchewan is rigid. The writer ventures no opinion as to which state of the law is the more desirable in a democracy. Point of view in such matters appears to be determined largely by one's religious convictions or prejudices. To the ardent Orangeman the implications of the Saskatchewan separate school law in the matter of school support mean little less than coercion or ecclesiastical tyranny. To the ardent Knight of Columbus, on the other hand, the corresponding implications of the Ontario separate school law are tantamount to license and evasion.

Moreover, it is obvious that Roman Catholic influences, as discernible in amendments to school legislation during the last twenty years, have been more vigilant and far-reaching in Saskatchewan (See Chapters Six and Seven) than corresponding influences

affecting school legislation in Ontario have been. This fact may, in part, account for one of the greatest political miracles in the history of Canada—namely, the victory at the polls in 1929 of the Anderson Government in Saskatchewan. Only those acquainted with the course of public events in Saskatchewan since 1905 can realize the magnitude of the recent political upheaval in that Province.

Under Sections 72 and 73 of the Act separate school boards in Ontario possess practically the same rights, academic and financial, to establish and maintain so-called continuation schools as are enjoyed by public school boards. These schools, however, are not high schools, although they include "fifth classes" which correspond, in a general way, to the first year of the high school course.

One of the most important clauses in the Separate Schools Act of Ontario is Section 65, which deals with the distribution of the taxes of corporations, exclusive of public utilities, as between public and separate schools. In interpreting Section 65, especially in the light of its practical operation, which apparently is prejudicial to separate schools, the reader should bear in mind Sections 12 and 76, which reflect the non-discriminatory spirit of separate school legislation in Ontario since pre-Confederation days. According to the latter sections, separate schools share in the provincial or "legislative" public school grants and in grants "for public school purposes made by any municipal authority" according to the same principle of distribution as applies to public schools. In the case of municipal grants this sharing takes place (Section 76) in the ratio of the "average number of pupils attending school" (separate) "as compared with the whole average number of pupils attending

school in the same city, town, village or township." Hence, from an administrative standpoint, public and separate schools appear to be organically related as parts of the same educational system. As stated by Viscount Haldane in connection with the Tiny Township Case, discussed below, the separate school was in reality "only a special form of the common school." Furthermore, if separate schools are entitled to exist at all—and their legal title in this respect is free from reasonable doubt—it would appear in the public interest that these schools should be efficient educational institutions.

According to Section 65 of the Ontario Separate Schools Act, a corporation *may* by "notice given in pursuance of a resolution of the directors" require a part of its property and business to be rated and assessed for separate school purposes. There is nothing mandatory about this provision. Under Section 65 the assessment of mixed companies is shared between separate and public schools on a *pro rata* basis according to the relative amounts of stock in these companies held by Roman Catholics and Protestants respectively. If, for instance, one-fifth of the stock in a corporation were held by Roman Catholics, not more than one-fifth of the assessment of the corporation could be rated for Roman Catholic separate school purposes.

The above section appears to be somewhat defective in its application to mixed companies whose shareholders are partly Protestant and partly Roman Catholic. As Mr. Justice Brown significantly pointed out in the Regina Case (See Chapter Seven), there are two outstanding reasons why a mixed company would not be likely to give notice regarding the division of its assessment. In the first place, a company has no

religious convictions to satisfy nor children to educate, and hence, while not indifferent as to the amount of the taxes, it would probably be so with respect to the mode of their distribution; and, in the second place, for business reasons a company would not be disposed to discriminate on a religious basis.

According to the most reliable information procurable, the above defects in the Saskatchewan school situation before 1913, the year when the law was amended, would appear to be found also in Ontario at the present time. In point of fact taxes collected from the majority of mixed companies in Ontario are available only for public school purposes. In Section 65 of the Ontario Act there is no provision, such as was introduced twenty years ago by an amendment to the corresponding section of the Saskatchewan law, whereby, if the corporation in question omitted to give the notice provided, the separate school interested was authorized to serve such notice as would force the issue and lead to an equitable division of the company's assessment. An amendment to Section 65 above, similar to that introduced in Saskatchewan in 1913, would probably remove the prejudice to which separate school supporters in Ontario consider themselves subjected as a result of the practical working out of the permissive clause now in the Act.

Moreover Section 65 of the Ontario Act makes no reference to public utilities, municipal or provincial, of which separate school supporters, along with other ratepayers, are owners. Roman Catholic (as well as the handful of Protestant) separate school supporters in Ontario, therefore, are deprived of any share of public utility assessments. Here again the general non-discriminatory spirit of the Ontario separate

school legislation appears to be absent. There is indeed a lurking suspicion in the minds of not a few impartial observers in Ontario that sectarian prejudice has been largely responsible for the continuance of a condition that deprives separate schools of a fair share of the taxes of corporations and public utilities. As a result of the actual working out of Section 65, it seems inevitable that the tax rate for separate schools, especially in the larger industrial areas, should be considerably higher than the rate for public schools. Moreover, from an educational standpoint, the former schools, on the average, are frequently alleged to be the less efficient institutions. Under existing circumstances it would indeed be surprising if the separate schools of Ontario were as efficient as, in particular, the urban public schools. The continuance of the present discriminatory condition in the allotment of public utility and corporation taxes would appear neither fair to separate schools nor in the public interest. The Banner Province of Canada can scarcely afford to condone a section of the law which, in its present form, appears a blemish in the provisions of an otherwise highly commendable Separate Schools Act.

A case of far-reaching application—The Board of Trustees of the Roman Catholic Separate Schools for School Section No. 2 in the Township of Tiny and others, Privy Council Appeal No. 158 of 1927—went before the Judicial Committee of the Privy Council as an appeal from the judgment of the Supreme Court of Canada. The judges of the Ontario tribunals, who originally heard the question, decided unanimously against the claim of the Roman Catholic separate schools, while the judges of the Supreme Court of Canada were evenly divided.

In the light of the historical development of separate schools, discussed in an earlier part of this chapter, and of the issues involved in the Manitoba School Question (See Chapter Four), it would scarcely appear advisable to enter into a detailed analysis of the legal points involved in this appeal. The importance of the decision in the Tiny Township Case, however, cannot be over-estimated. Indeed, this case probably ranks with the famous Barrett and Brophy Cases discussed in Chapter Four. The former case, it is true, did not stir up such racial and sectarian upheavals throughout Canada as did the earlier Manitoba litigation. This was largely owing to the fact that the Ontario appeal was not connected with a Dominion-wide political campaign, such as convulsed Canada in 1896, and was not an accessory before the fact to the overthrow of a great political party. Fortunately, political, racial and sectarian animosities could no longer assume such violent national proportions in 1927 as in the Canada of 1896. Sectarian bigotry and rancour, at white heat from 1890 to 1896, had been partially allayed through subsidence of the passions that found a safety valve in the famous Manitoba school controversy.

The main points raised by counsel for the Roman Catholic separate schools in the Tiny Township Case were the following:

First, certain acts passed since 1867 by the Legislature of Ontario—with respect to the basis of distributing legislative grants for schools, as provided by the Separate Schools Act of 1863 and confirmed by Section 93 (1) of the British North America Act, 1867—were alleged prejudicially to affect the rights or privileges with regard to denominational schools guaranteed the Roman Catholic minority at the time

of the union and hence to be *ultra vires* of the Ontario Legislature. According to this contention, the principle governing legislative grants for separate schools had become fixed at the Union and could not be interfered with by the provincial authorities. Moreover, if the above and other claims of the separate schools were held valid, the latter would become entitled to a share of the provincial grants that had been, or might be, made for high school purposes.

In the second place, it was contended that pre-Confederation separate schools included grades and subjects found in post-Confederation secondary schools. In other words, the separate school was a composite institution extending from the kindergarten to the university. Under these conditions the appellants contended that post-Confederation separate schools were legally entitled to establish such grades and to teach such courses of study as were conducted in the high schools and collegiate institutes of Ontario. As a corollary of this contention, it was claimed that all regulations of the Ontario department of education purporting to curtail these activities were null.

In the third place, it was argued that supporters of Roman Catholic separate schools were exempt from rates imposed for high schools and collegiate institutes, unless the latter were "established and conducted by Boards of Trustees of Roman Catholic Separate Schools."

In the light of the above contentions the importance of matters of grading, curriculum and administrative controls, as discussed in the historical part of this chapter, becomes apparent.

It should be emphasized also that the argument in the Tiny Township Case was confined to questions of law under Section 93 (1) of the B.N.A. Act, 1867, and

earlier statutes. The principle involved was that of *ultra vires*. In other words, was the Legislature of Ontario legally competent to pass the statutes complained of by the Roman Catholic minority? The question of administrative *fairness*, or the alleged prejudicial affection of separate school rights or privileges *in fact, though not in law*, was not in issue before the courts. In a word, their Lordships had to decide the following question: Is the offending legislation *legal* whether it is *fair or unfair*? The matter of possible recourse to remedial measures was merely a side issue. "It may be," to quote Viscount Haldane, who delivered the judgment of their Lordships, "that even if the contention of the appellants as to the scope of Subsection (1) (Section 93, B.N.A. Act, 1867) is shut out, there will remain to them a remedy of a wholly different kind in the shape of an appeal under Subsection (3) to the Governor-General in Council in an administrative capacity." The reference here is to the provision in Section 93 (3) of the B.N.A. Act for remedial legislation. If the suggestion of Viscount Haldane were acted upon, the situation developing would be a clear parallel to the Brophy Case discussed in Chapter Four.

Further reference should be made to the separate school contention regarding the distribution of legislative grants for education. As stated earlier in this chapter, the chief question at issue in this connection arose from the meaning of the phrase, "not otherwise appropriated by law." Separate school counsel argued that, according to the above clause (found in Section 106 of the Common Schools Act of 1859, which was also largely applicable to separate schools) and to Section 20 of the Separate Schools Act of 1863, separate schools were not debarred from sharing in all moneys

appropriated by the Legislature for education *outside* those funds "granted or provided by the Legislature for the support of common schools." Grants for university education were not in question nor was there any argument as to the right of separate schools to share in grants for common schools exclusive of high schools and collegiate institutes. If the above contention of the appellants were valid, separate schools would be entitled to a share of the high school grants. Their Lordships, in rejecting the claim of counsel for the Roman Catholic separate schools, adopted the view that these schools were entitled to share only in the moneys "granted by the Legislature for the support of common schools not otherwise appropriated by law" and also to a share in the grants for common school purposes as provided by the Act of 1863. The issue, therefore, really turned on the point as to whether the provincial authorities had power to make payments—to high schools, for instance—out of the school fund granted by the Legislature *before* the balance was arrived at which would be available for common school purposes; or were the separate schools entitled to a share on the *whole* fund. According to their Lordships' judgment, the former interpretation was the correct one.

The following example, used merely for purposes of illustration, should clarify the matter. Approximately seventeen per cent., or one-sixth of the school population of Ontario, is found in Roman Catholic separate schools. Assume that \$6,000,000 is available as a legislative grant for elementary and secondary education and that \$900,000 of this amount is allocated for high schools and collegiate institutes. According to the contention of counsel for the separate schools, the latter were entitled, under the statutes, to one-sixth

of \$6,000,000, or to \$1,000,000. The contention of the Ontario authorities, on the other hand, was to the effect that the allotment of \$900,000 for high schools might first be deducted, leaving \$5,100,000, of which the separate schools would be entitled to approximately a one-sixth share, or \$850,000. The annual difference involved, \$150,000 in the above example, is obviously a material one, and over a period of years would reach an amount that would well repay the litigation involved in securing it.

A number of parallels between the Barrett Case, 1892, and the Tiny Township Case, 1927, might be established. According to the decision in the former case, the Roman Catholic minority of Manitoba was obliged to support the national schools while receiving no government grant for their separate or parochial schools. By the latter case, the Roman Catholic minority of Ontario was obliged to support the public high school, while Roman Catholic separate schools were not legally entitled to any share of the high school grant. In both cases the moral, if not the legal, rights and privileges of the Roman Catholic minority in relation to education might have been prejudiced. The decision in the Brophy Case, 1895, removes all doubt in the matter regarding the Manitoba Roman Catholic minority. Viscount Haldane's judgment in the Tiny Township Case suggests a possibly similar situation in Ontario. The appeal, however, of the Manitoba minority for remedial legislation proved a futile undertaking and ultimately wrecked the political fortunes of the party that sponsored this legislation in the federal Parliament. It is improbable, therefore, that the Roman Catholic minority in Ontario will pursue a similar fatuous course. In the light of the events of 1896 it appears very doubtful whether any

responsible political party of Canada would have the temerity to grasp the nettle of separate school prerogatives by championing the cause of remedial legislation. In Ontario, however, the Roman Catholic minority should now have a clearer perspective of the scope of its educational rights and privileges, which extend to the end of the elementary grades, or admission to high school, and may also include "fifth classes" of the continuation school. Moreover, the provincial educational authorities retain power to inspect and regulate the grades and courses of study in Roman Catholic separate schools.

While Roman Catholic separate schools in Ontario are entitled to a share of the legislative grant, on the same basis as is applicable to the public school, and are also immune from taxation for public school purposes, a quite different situation, it will be recalled, exists in Manitoba. In the latter Province the Roman Catholic minority fell victims to the Public Schools Act of 1890. While still at liberty to establish and maintain denominational schools solely at their own expense, they must also contribute to the support of the public and high schools of Manitoba. In the light of school litigation in Canada during the last forty years, Roman Catholics of Ontario would probably be well advised—with the exception of pressing for a share of the taxes of public utilities and corporations—to "let sleeping dogs lie."

In connection with matters of grading and curriculum, their Lordships, in delivering judgment in the Tiny Township Case, dissented from the view that separate school trustees were legally authorized to give "secondary education in their schools otherwise than by permission, express or implied, of the Council of Public Instruction." As is manifest from a

reading of the educational statutes discussed in the earlier part of this chapter, the provincial authorities, while permitting the separate schools of Ontario to exercise the above privilege, had never abdicated their legal powers of inspection, grading and general administrative control. The following extracts from the judgment of Viscount Haldane would appear finally to dispose of this question:

The separate school was only a special form of common school, and the Council could in the case of each determine the courses to be pursued and the extent of the education to be imparted. A full power of regulation, such as the purpose of the statutes quoted renders appropriate, is what suggests itself, and this is the natural outcome of a scheme which never appears to have really varied. Such expressions as "organization," "discipline," and "classification," do, in their Lordships' interpretation of them, imply a real control of the separate schools. . . .

In their Lordships' view, in the face of the provisions referred to, it is impossible to contend successfully that it was *ultra vires* after Confederation to make new appropriations out of the grants which would diminish what would otherwise have come to the appellants. Whether the case is looked at from the point of view of regulation, or whether it is regarded from that of discretion in power of appropriation, the result is the same. It is indeed true that power to regulate merely does not imply a power to abolish. But the controversy with which this Board has to deal on the present occasion is a long way from abolition. It may be that the new laws will hamper the freedom of the Roman Catholics in their denominational schools. They may conceivably be or have been subjected to injustice of a kind that they can submit to the Governor-General in Council, and through him to the Parliament of Canada. But they are still left with separate schools, which are none the less actual because the liberty of giving secondary and higher education in them may be abridged by regulation. Such an abridgment may be in the usual course when a national system of education has attained a certain stage

in its development, and it would be difficult to forego this power if the grading which may be essential is also to be possible. Their Lordships do not think grading is in itself inconsistent with such rights to separation of schools as were reserved at Confederation.

The last three sentences in the above statement would suggest that the Ontario educational authorities are competent to establish Junior High Schools, for instance, if the grading thereby considered "essential" were also to be made "possible." Junior High Schools include Grades VII, VIII and IX, or the last two years of the traditional elementary school and the first year of high school. It would, therefore, appear legal to bring the last two years of the Roman Catholic separate schools of Ontario within a provincially-established Junior High School organization. Moreover, a similar state of the law may also apply to Saskatchewan and Alberta.

The decision in the Tiny Township Case involved the educational interests of all racial groups of Roman Catholics in Ontario. Appeals arising out of the famous Regulation 17, passed by the Ontario educational authorities twenty years ago, were of primary concern to French Canadians rather than to Roman Catholics of other racial origins. These matters are discussed in the following chapter.

CHAPTER XI

LANGUAGE ISSUES IN ONTARIO

FROM 1912, when the regulations contained in the famous Circular No. 17 were adopted by the Ontario educational authorities, to 1927, when the recommendations of the Merchant Report were made effective, Ontario had its language problem in intermittently acute form. This problem was of a bilingual nature and in many respects resembled the language issues, already discussed, that periodically agitated the politicians and electorate of Saskatchewan as late as the political upheaval of 1929. Was English, as the language of instruction in separate schools of French-English communities, to be sacrificed in the interests of French? More particularly in connection with the separate schools of several counties near the Ottawa and St. Lawrence rivers, where the French population showed considerable increase within recent years, had the question of language instruction occasioned grave concern to the Ontario Government and educational officials.

The chief object of Circular No. 17 (commonly spoken of as Regulation 17) was to promote the teaching of English to all pupils attending publicly-supported schools in bilingual communities. That this result was far from being satisfactorily attained in the schools of certain of these communities, even fifteen years after Regulation 17 had been adopted, was shown by the findings of the Merchant Report. This Report made clear that, as late as 1927, the French language was given right of way in many of the above schools to

such an extent that the efficiency of French pupils both in written and oral English was of a decidedly inferior order. Such a condition Old Ontario, the corner-stone and bulwark of British institutions and loyalties on this continent, would probably be the last Province to tolerate.

As was perhaps natural under the circumstances, the validity of Regulation 17 was persistently assailed in the courts. Its legality, however, was never seriously threatened, as is shown by the fact that it withstood the test of three appeals to the Judicial Committee of the Privy Council, which laid down the important principle that instruction in French or other non-English language is not a right or privilege with respect to denominational schools.

The ostensible attitude of the Ontario authorities, so far as may be judged from their public statements, has never been that the French language should be proscribed, but that English should not be sacrificed to any other medium of instruction in publicly-supported schools. Even at the present time, although rapid progress in the mastery of English by French-speaking pupils in mixed schools of Ontario has been made since the adoption of the Merchant Report (discussed below) in 1927, there are still a number of publicly-supported elementary schools in which French is the chief medium of instruction. Inspectors of Roman Catholic separate schools, for instance, officially report on the following points under the caption, "Language of the School":

Number of English-speaking pupils; Number of French-speaking pupils; In the case of mixed schools, are pupils taught in mixed classes or in parallel classes; Language used in teaching English, Arithmetic, Geography, History; Language used in giving school directions; Language used

on the playground. Also the letters "F and E" are used in reporting cases "where the main medium is French."

It is obvious, therefore, that the Ontario authorities have not resorted to such a repressive school policy as was inflicted on Alsace-Lorraine, for instance, at the end of the Franco-Prussian War. No attempt has been made in Ontario to deprive French-speaking pupils of instruction in their mother-tongue. Rather has the aim been to ensure that these pupils shall obtain an adequate knowledge of the English language as well as of French. Further evidence of the tolerant attitude of the Ontario Government may be found in Section 4 (2) of the present *Courses of Study for the Public and Separate Schools*, which contains the following clause:

With the approval of the Minister, the Board may add to the list of optional subjects such other subjects as may be suitable to meet the needs of the locality.

This clause is the only official connection whereby French may be admitted in the elementary courses of study which extend from the Primer to Senior IV or from Grade I to Grade VII. The Ontario Department of Education has prepared a primer and two spelling books in French "for use in those schools which have the Minister's permission, under the above regulation, to give instruction in French." French may also be taught as a regular subject in Fifth Classes. The writer is reliably informed that, in schools where Section 4 (2) above is applicable, encouraging progress in the mastery of English is being made. These schools do not resent inspectorial supervision and are rapidly responding to the generous treatment accorded by the present Ontario educational authorities.

It is to the credit of the present school authorities

in Ontario that they have refused to resort to the policy, with regard to the use of French in mixed schools, of "scething the kid in the mother's milk." Neither good Britishers nor linguists can be produced by such coercive measures. If the English language is not being sacrificed to the French, there is no justification for the exclusion of the latter language from the schools of mixed communities. Section 100 (b) of the Ontario Public Schools Act recognizes this principle of enlightened tolerance in enjoining every teacher "to use the English language in instruction and in all communications with the pupils in regard to discipline and the management of the school, except where it is impracticable to do so by reason of the pupil not understanding English, but recitations requiring the use of a textbook may be conducted in the language of the textbook."

All school acts, circulars, regulations and textbooks, other than those mentioned above, of the Ontario Department of Education are published in English only. All official correspondence is in English. French-speaking school inspectors, who assist in the supervision of schools in mixed communities, are not permitted to have their letter-heads or envelopes printed in French; nor are the mixed schools in their inspectorates ever officially referred to as "bilingual." While these matters may appear to be of minor importance, they are at least indicative of the careful attention given by departmental officials to matters of administrative detail.

The following extract from the record of the Mackell Case, discussed below, was quoted with approval by their Lordships of the Privy Council:

. . . . While all classes of the French people are not only willing, but desirous, that their children should

learn the English language, they at the same time wish them to retain the use of their own language, and there is no reason why they should not do so. To possess the knowledge of both languages is an advantage to them. And the use of the English language instead of their own, if such a change should ever take place, must be brought about by the operation of the same influences which are making it all over this continent the language of other nationalities as tenacious of their native tongue as the French. It is a change that cannot be forced. To attempt to deprive a people of the use of their native tongue would be as unwise as it would be unjust, even if it were possible. In the British Empire there are people of many languages. The use of these does not affect the loyalty of the people to the Crown, and the English language remains the language of the Empire. The object of these schools is to make better scholars of the rising generation of French children, and to enable them to do better for themselves by teaching them English, while leaving them free to make such use of their own language as they please.

So far as the writer has been able to ascertain, the above statement aptly explains the attitude of the present educational authorities in Ontario towards the matter of language instruction in mixed schools. This attitude, moreover, was not particularly conspicuous in the authors of the dictatorial document known as Circular 17 to which more extended reference should now be made.

For nearly thirty years before the adoption of this Circular the educational authorities of Ontario had tried various methods with a view to finding a satisfactory solution to the problem of language instruction in schools attended by French-speaking pupils. As early as 1893, for instance, the Council of Public Instruction of the North-West Territories issued a circular prescribing the adoption of the "Ontario series of bilingual readers, part I, II, and the second

reader" in school districts where French was the vernacular language. Questions of bilingual instruction in state-supported schools were already of ancient vintage in Ontario before the educational authorities of the Territories and Manitoba were confronted with similar language problems.

The regulations embodied in Circular 17, adopted in June, 1912, represented a carefully devised, if largely futile, attempt to deal with the perennial and thorny issue of bilingualism. Moreover, one of the deductions to be drawn from the inglorious history of this Circular—a deduction of long standing in the history of small European nationalities—is that language problems cannot be satisfactorily solved by formidable regulations or official pronouncements supported, as the latter may be, even by the sanction of supreme authority. Indeed, no person can be forced to learn a language. The arbitrary application of superior authority in such cases is more likely than not to defeat its own purpose. The problem of language instruction is essentially a human, rather than a legal, one. Reliance upon enlightened supervision, conducted in a spirit of tolerance, will do more to promote efficiency in the learning of a language, especially if that language is other than the pupil's mother-tongue, than all the edicts of a highly centralized bureaucracy—however benevolent may be the intentions of the bureaucrats. The maintenance of the "personal touch" and of constant human contact with schools where bilingual conditions prevail will eventually achieve more satisfactory results than can possibly be obtained by resort to coercion or legal process.

It is also evident to observers of average intelligence that the imperious or canonical-minded minister of

education, unappreciative of the influence of language ties in the maintenance of aspirations for racial solidarity, is seriously lacking in the elemental qualities of educational statesmanship such as Ontario especially needed to avert or remedy the language crisis arising twenty years ago. While clearly within the letter of the law in issuing imposing mandates or in the indulgence of other official crotchets for the solution of bilingual problems, such a formalist is, almost without exception, hopelessly wrong both in the conception and in the application of his remedial measures. A successful minister of education must first of all be a practical humanist rather than a legalist who puts his trust in canons, formularies and other vain creations of the mechanistic, and highly specialized, intelligence. The belated fate of Circular 17 (See Appendix VI), after fifteen years of comparative failure, provides an illuminating commentary on the truth of these observations.

In the very nature of the case no general rules can adequately provide for the great variety of problems bound to arise when bilingual issues demand solution. Indeed, such rules, unless sufficiently general as to be almost meaningless, and therefore unnecessary, are about as likely to create embarrassing, if not dangerous, complications as to smooth out difficulties always inherent in bilingual school situations. A flexible, yet firm, policy of inspection, supervision and teacher training, involving wide discretionary powers on the part of competent and responsible officials in close contact with the language problems involved, is more in accord with the British way of dealing with such conflicting situations. Such, in general, was the solution recommended by the forward-looking Merchant Report of 1927. Foolish regulations, to

quote Emerson, are "like ropes of sand that break in the twisting."

In the first place, Circular 17 was unfortunate in its designation of schools in which French was "the language of instruction and communication." Section 1 (1), while affirming the obvious—namely, that only two classes of primary schools, public and separate, are found in Ontario—went on to state that the term, "English-French," was, for purposes of convenient reference, applied to those schools in which French was the dominant language. By recognizing such an unofficial classification of schools, based on a difference of language, the tendency would be to emphasize a distinction that, in the interests of good administration, should have received as little publicity as possible. Moreover, in the light of Clause 3, quoted below, the inference might readily have been drawn by ardent advocates of bilingual instruction that the official searchlight was deliberately being turned upon the French language with the intention of making it the direct object of attack or at least of relegating it to a position of secondary importance. While in a Province where English is the official language, such a policy, in itself, is undoubtedly defensible, the unnecessarily arbitrary method of attempting to carry this policy into effect was, to say the least, a case of blundering administrative procedure bound to defeat its own purpose.

Section 3 of Circular 17, regarding "the use of French for instruction and communication," reads, in part, as follows:

Where necessary, in the case of French-speaking pupils, French may be used as the language of instruction and communication; but such use of French *shall not be continued beyond Form I*, except during the school year of

1912-13, when it may also be used as the language of instruction and communication in the case of pupils beyond Form I who, owing to previous defective training, are unable to speak and understand the English language.

(2) In the case of French-speaking pupils who are unable to speak and understand the English language well enough for purposes of instruction and communication, the following provision is made.

(a) As soon as the pupil enters the school *he shall begin the study* and the use of the English language.

(b) As soon as the pupil has acquired sufficient facility in the use of the English language *he shall take up in that language* the course of study prescribed for the Public and Separate Schools.

It seems scarcely necessary to add that the above clauses were in line with sound educational psychology. It seems equally obvious, however, that their unnecessarily mandatory tone was a violation of sound social psychology. It is also manifest that, unless a most minute and constant system of supervision were instituted, these mandates of perfection would frequently be honoured in the breach. That such was the case is strikingly implied in the disclosures of the Merchant Report.

A reading of Circular 17 in its entirety (Appendix VI) would probably leave little doubt in the mind of the unbiased observer that it constituted, on the whole, a tactless public document. Some of its provisions might well have represented a wisely-planned policy, withheld from publication, and carried out through a system, already mentioned, of enlightened and firm supervision. The arbitrary tenor of the Circular, however, was well designed—though doubtless unintentionally so—to inflame French sentiment and to precipitate a school crisis which wiser administrative counsel would probably have averted. In some respects, indeed, the Circular

might be read as an ultimatum to the French, who were to fall into line by the end of the school year, 1912-13, or accept the consequences. The latter involved the withholding of grants after June, 1912, from English-French schools that did not provide teachers "with a knowledge of the English language sufficient to teach the Public School Course." The Circular rightly made no attempt to define what the above standard of qualification or the criteria to be used in judging the adequacy of such standard should be. Probably this matter was intended to be left to inspectorial discretion and report. Nor can any serious objection be urged against the modest qualifications demanded. The absolute tone of the document, however, including the almost sacramental importance attached to 1912--the year when the big stick was apparently to be wielded--is suggestive rather of the outlook of the Prussian bureaucrat than of the judicious British administrator.

In the light of the above and similar considerations the Ontario authorities were probably well advised to jettison this largely abortive Circular. Educational progress in the mixed schools involved had doubtless been retarded as a result of the attempted enforcement of Circular 17 in the years preceding the appointment of the Merchant Commission. Even the most bigoted Protestant sectarian, reasonably acquainted with the school situation in English-French communities of Ontario during the period from 1912 to 1927, must have realized the futility of certain of the provisions contained in this undiplomatic edict, which proved to be as prolific a source of racial ill will as of protracted and expensive litigation.

Of the various legal actions arising out of Circular 17, the first, and most important, to go before the

Judicial Committee of the Privy Council was that of the "Board of Trustees of the Roman Catholic Separate Schools for the City of Ottawa vs. Mackell and others." (See *Appeal Cases, 1917*, page 75; *Times Law Reports, 1916*, page 37.)

Relying on Circular 17, R. Mackell and other separate school ratepayers applied for an injunction restraining the Ottawa Separate School Board,

(1) From continuing in its employ or paying out of the moneys of the Board the salaries, wages or other remuneration for their services, of teachers in the employ of the Board who did not possess the proper legal qualifications to teach or who were not authorized to teach pursuant to the provisions of any Act of the Legislature of Ontario or the regulations made by the Department, or of the teachers then in the employ of the Board who refused or neglected to conform to the said regulations or who in any manner contravened the said regulations;

(2) From passing or enacting any by-law or by-laws authorizing the borrowing of money by debenture, mortgage or otherwise whilst the Board neglected or refused to conform to, comply with and enforce the said regulations.

The Separate School Board appealed against this injunction on two grounds: first, so-called Regulation 17, on the validity of which the above injunction depended, was alleged to be beyond the jurisdiction of the Ontario Department of Education; and, second, that, if Regulation 17 were assumed to be authorized by provincial legislation, then the legislation itself was *ultra vires*. In July, 1915, the Supreme Court of Canada dismissed the appeal of the Ottawa Separate School Board, whereupon a further appeal was carried to the Privy Council.

Of the 192 Roman Catholic schools whose rights were sponsored by the appellants, 116 were designated English-French schools. Great reliance was placed

by the appellants on the expression "kind," found in Section 79 (8) of the Upper Canada Common School Act of 1859. Under the above Section the trustees of common schools were authorized: "to determine (a) the number, sites, *kind* and description of school to be established and maintained in the city, town, or village"; also (b) "the teacher or teachers to be employed, the terms of employing them" and so forth. By Section 24 of another Upper Canada statute of 1859, the trustees of separate schools were given all the powers that the trustees of common schools had under the first-mentioned Act. Both the above Acts were in force in Upper Canada in 1867.

According to the contention of the Roman Catholic minority, the word, "*kind*," mentioned above, meant a school "where the French language, under the direction of trustees, might be used as a medium of instruction" on terms that placed it on a parity with the use of English. This, the appellants urged, was a right or privilege possessed with respect to denominational schools in 1867.

Their Lordships, however, held that "kind" of school meant the kind or character of school in such sense as the following: for instance, a "boys' school," or an "infants' school." "These schools," continued the judgment, "must be conducted in accordance with the regulations, and their Lordships can find nothing in the statute to take away from the authority that had power to issue regulations the power of *directing in what language education is to be given*." Also, it was added that, if the trustees of the common schools were obliged to obey such a regulation, it also followed that the trustees of the separate schools were likewise obliged to do so, provided that the regulation did "not interfere with a right or privilege reserved under

the Act of 1867, i.e. a right or privilege attached to denominational teaching."

Furthermore, their Lordships held that Circular 17 did not interfere with the separate school trustees' "right to manage their separate schools," inasmuch as "the right to manage does not involve the right of determining the language to be used in the schools." The validity of Circular 17, therefore, was not open to question. As stated in an earlier chapter, their Lordships also ruled that the words, "class of persons," found in Section 93 of the B.N.A. Act, 1867, must be determined according to "religious belief" and not according to race or language.

The second appeal of the Roman Catholic minority, "The Board of Trustees of the Roman Catholic Separate Schools for the City of Ottawa vs. the Corporation of the City of Ottawa, the Ottawa Separate School Commission, and the Quebec Bank," (See *Appeal Cases, 1917*, page 78; *Times Law Reports, 1916*, page 41) went before the Privy Council in 1916. This case arose out of an Act, passed by the Ontario Legislature in 1915, giving the Minister of Education power to appoint a commission to manage the Ottawa separate schools in case the separate school board failed to carry out the clauses of the Ontario school acts and regulations. In July, 1915, the Minister of Education, under authority of this Act, appointed such a commission. Thereupon the separate school board took action against the parties mentioned in the above citation to restrain them from paying over to the commission or any one, other than the board, the moneys collected for separate school purposes. This action was instituted on the ground that the rights of separate school supporters had been prejudicially affected by the Act of 1915 (setting up a

commission). The Canadian courts had dismissed the contention of the Roman Catholic minority, but, for reasons stated below, the Privy Council reversed the decision of the Canadian tribunals.

"The case before their Lordships," according to the Privy Council judgment, "was not that of a mere interference with a right or privilege, but of a provision which enabled it to be withdrawn *in toto* for an indefinite time. Their Lordships had no doubt that the powers so given would be exercised with wisdom and moderation, but it was the creation of the power and not its exercise that was subject to objection, and the objection could not be removed even though the powers conferred were never exercised at all. To give authority to withdraw a right or privilege under these conditions necessarily operated to the prejudice of the class of persons affected by the withdrawal."

Pursuant to the above decision, the Commission resigned control of the Ottawa separate schools in November, 1916.

The third appeal of the Roman Catholic minority to the Privy Council, "The Board of Trustees of the Roman Catholic Separate Schools for the City of Ottawa vs. the Quebec Bank and others and the Attorney-General for Ontario (Intervener)," followed in 1917. (See *Appeal Cases, 1920*, page 231; *Times Law Reports, 1919*, page 23.) In this case the legality of the acts of the commissioners appointed by the Minister of Education, under the Act of 1915, to administer the recalcitrant minority schools of Ottawa, was challenged by the Ottawa Separate School Board. In the discharge of their duties the commissioners had expended various sums of money in the period from July, 1915, to November, 1916, amounting to

approximately \$225,000, and had also incurred a liability to the Bank of Ottawa for nearly \$72,000.

In April, 1917, the Ontario Legislature passed an Act that indemnified the commissioners against all personal liability for indebtedness incurred in consequence of any acts done in their official capacity. This Act declared that the commissioners disbursed moneys and incurred the liability to the bank for "payments and expenditures which were necessary to maintain and carry on the said schools and which should have been made by the Board in the proper conduct and management of the said schools but for its wrongful neglect and default as aforesaid."

Both the Appellate Division of the Ontario Courts and the Supreme Court of Canada held that the Act of 1917 was *intra vires*. On appeal to the Privy Council the appellants contended that the above act of indemnity was, under Section 93 (1) of the B.N.A. Act, 1867, *ultra vires* of the Ontario Legislature. Under this section, it was urged, the provincial Legislature exceeded its authority in empowering the commission to deal with school funds. Also it was contended that the Legislature exceeded its jurisdiction in ratifying the allegedly illegal acts of the commissioners. In addition, the separate school board maintained that their rights with respect to the minority schools in question had been prejudicially affected by the Act of Indemnity of 1917, although the appellants admitted that the money spent by the commission and the liability incurred to the Bank of Ottawa had resulted from the discharge of the duties for which the commission had been appointed. Nor was there any suggestion that these duties had been carried out in other than a proper manner.

In dismissing the appeal of the Ottawa Separate

School Board, their Lordships unanimously affirmed the decision of the Supreme Court of Canada that the Act of Indemnity of 1917 was valid. "The appellants," said their Lordships, "cannot say that the money, if they had had it, would not have been spent on the same purposes; all that they can say is that they would have had the control and spending of it. The right which has to be prejudicially affected is the right to maintain separate schools under the Education Acts."

The statute of 1915, discussed above, had prejudicially affected the rights of the appellants by extruding them from the management of their schools and hence was *ultra vires*. However, with reference to the Act of 1917, their Lordships pointed out that it could not be said "to create a prejudice to affirm that the money was rightly spent for the purposes for which it was destined."

The discussion of the above cases may provide some idea of the official bungling that brought into existence the tactless and ill-fated Circular 17. Indeed, the student of Canadian history would probably search in vain for a more conspicuous example of administrative indiscretion than is embodied in this remarkable document.

After the fifteen clauses of Circular No. 17 had been in operation for over twelve years, the Hon. G. H. Ferguson, then Minister of Education and Premier of Ontario, appointed a Commission in 1925, under the Chairmanship of Dr. F. W. Merchant, Chief Director of Education, with a view to "obtaining accurate information respecting their practical working, especially in respect to the efficiency of the pupils in the English and French languages." This Commission undertook the work of investigating not

only the efficiency of the schools in question but also the "means for improving the instruction, and plans for securing a more constant supply of qualified teachers for the schools." Members of the Commission had special qualifications both in English and French. Their Report, adopted in 1927, contained a penetrating analysis of conditions in English-French schools and strikingly revealed the futility of the ill-advised Regulation that had occasioned so much litigation and racial ill-feeling. The efficiency of the schools in question was judged by the proficiency of the pupils. In all, 330 schools, containing 843 classrooms, were examined. Of this number, 215 schools, containing 593 classrooms, were so-called "English-French Schools," while 115 schools, with 250 classrooms, were ordinary public and separate schools in which French was taught. Some of the more significant findings of the Merchant Report are given below.

In the English Reading tests the standard attained by seventy per cent. of the schools was unsatisfactory. Articulation and pronunciation were found to be inaccurate, expression was poor, while understanding of the meaning of the passages read was meagre.

The standing in Oral English was even more disappointing. While "striking variations" were found in different areas of Ontario, the pupils in the "great majority" of the schools were "very poorly trained." "Frequently," stated the Report, "pupils who had been two or three years in school were found to know nothing in English beyond the names of a few objects in the classroom." Nor did the examiners exact a high standard of English expression. In the language of the Report: "Usually the pupils were required to name and point out common objects and

qualities, to perform familiar actions, and to express themselves in short sentences." Yet, on the basis of this modest standard, Form I pupils in sixty-four per cent. of all the schools were graded "unsatisfactory in English Conversation." Oral English results in Form II were even more unsatisfactory than in Form I. Approximately eighty per cent. of the schools showed "unsatisfactory results in this Form." Summing up the situation in oral English, the Report stated that "in about one-third of the schools the pupils in the highest class" could "speak English satisfactorily"; in another third of the schools the pupils could speak English "to some extent but very imperfectly"; while in the remaining third of the schools the pupils were unable to "speak English at all." Shades of Circular No. 17! It should be remembered that such results as the above were found after the behests of this famous document had been in operation for over twelve years!

The standing in Written English was, if possible, even more disappointing. Form V of the public or separate school corresponds, in a general way, to the first year of the high school course. Nevertheless, on the basis of the modest standards of testing adopted by the examiner, about fifty per cent. of the pupils in this Form were strikingly inefficient in written English. In the language of the Report: "In Form V, twenty-eight per cent. of the pupils wrote satisfactorily; twenty-eight per cent. wrote with a few mistakes; thirty-two per cent. wrote with many mistakes; eleven per cent. wrote very badly; while one per cent. could not write." In the schools of two counties thirty per cent. of the pupils in Forms IV and V were unable to write English at all, while only six per cent. could write English with "reasonable

facility." Form II pupils in seventy-one per cent. of the schools investigated were unable to spell English words satisfactorily. In the schools of two counties only six per cent. of the Form II pupils were able to reach the required standard in English spelling.

While the standing of the pupils in oral French was, in the main, fairly satisfactory, the same observation did not apply to the results achieved in written French, which were described as "distinctly disappointing." In the judgment of the examiners, the training given in these schools in the writing of French was "inefficient."

The standing of the pupils in arithmetic was found to be "adequate" in only thirty-five per cent. of the classes examined. In history and geography the attainments of the pupils were "satisfactory" in about half of the schools. These results, along with those in language instruction, indicated that, while frequently there was evidence in the schools of "teaching ability of high order," nevertheless, there was a "prevalence of a low standard of technical qualifications among the teachers, and in consequence a great deal of poor teaching."

In discussing the importance of instruction in English, the commissioners pointed out that pupils in the schools where French was taught should, "on completing the Fourth Form, have acquired the ability to speak, to read and to write the English language with a fair degree of accuracy and facility." As is evident from the foregoing discussion, however, the results attained did not in any appreciable measure satisfy the above requirements. The chief reason for the unsatisfactory standards attained in oral and written English was explained by the commissioners as follows:

There is a wide difference between giving English a place on the curriculum and providing the school conditions which will result in the ready acquisition of the language. The fact is that in a large proportion of the schools, English is regarded merely as a subject on the programme like arithmetic and history, in which instruction is given at specified periods. Wherever this is done the results in English are unsatisfactory. We are convinced, therefore, that among the conditions that determine the pupil's ability to use English with facility, the language of instruction plays a very important part.

From an administrative point of view the commissioners were of opinion that it would be unwise to attempt to define, by regulation, other than Section 87 (b)¹ already mentioned, what should be the language of instruction and communication in all English-French schools. "We believe," stated the commissioners, "that the only effective means of securing proper restriction and adjustment in respect to the language of instruction is through personal supervision and direction." The expression, "personal supervision and direction," gives the keynote of the Merchant Report. This principle, it is true, had been introduced in Circular 17, which left with the chief inspector of schools the final settlement of questions relating to the language of instruction. The other sections of this Circular, however, nullified in large measure the operation of this principle. The results of the Merchant investigation established beyond reasonable doubt that the clause of Circular 17 prescribing the use of English, as the language of instruction in English-French schools, had been little

¹ "It shall be the duty of every teacher to use the English language in instruction and in all communications with pupils in regard to discipline and the management of the school, except where it is impracticable to do so by reason of the pupil not understanding English, but recitations requiring the use of a textbook may be conducted in the language of the textbook."

other than a meaningless, though doubtless well-intentioned, gesture.

To make effective the principle of "supervision and direction," the commissioners offered the following main solution:

The necessity for securing better instruction in English and in French and of improving the general status of the schools is so urgent that we suggest that it be made the responsibility of two special officers to be appointed by the Department of Education, a Director of English Instruction, and a Director of French Instruction. The duty of these officers should be to keep themselves constantly in touch with the schools in all parts of the Province, to study all phases of the problems presented, and to co-operate with inspectors and teachers in setting up standards and in devising ways and means to make instruction effective. In addition, the directors should, by their reports, keep the Minister of Education continuously informed respecting actual conditions in the schools.

More adequate professional training of teachers for English-French schools was also recommended. As a result of this recommendation a second normal school, conducted by the University of Ottawa and specially designed for the training of French-speaking teachers, was established. The courses and final examinations are now the same for French-speaking normal school students as for English-speaking teachers-in-training. French-speaking students, however, are required to pass additional examinations in "French Reading, French Spelling, French Conversation, French Grammar, French Literature and French Composition." So rapid has been the progress made since the adoption of the Merchant Report that it is confidently expected a full supply of adequately trained second and first-class certificated teachers for the French-speaking schools of Ontario will be available by 1937 or earlier.

The Report of the Ontario Department of Education for 1930 contains the following statement by the Hon. George S. Henry, Premier and Minister of Education:

The Director of English Instruction, the Director of French Instruction, and the inspectors report substantial improvement in the ability of the pupils to speak, read, and write both languages as well as to deal with the other subjects of the course of study. The fact that 962 French-speaking pupils passed the high school entrance examination in 1930 is evidence of the success of the work that is being done. This number represents an increase of seventy-eight over the previous year. There is reason for confidence that the improvement already begun will be progressive and cumulative. The Normal School established at Ottawa for the training of teachers for these schools has shown a remarkable growth in attendance during the three years of its existence. At the session of 1928-29 there were fourteen students; at the session of 1929-30 there were forty-five; and at the present session there are eighty students in attendance. The preparation of increasing numbers of these teachers for first and second class certificates is one of the most hopeful features of the situation and can scarcely fail to raise the standard of the schools. At the June Departmental Examinations, 1930, and at the examinations following the Summer Courses of 1930, very few teachers engaged in schools where French is a subject of instruction failed to secure an advancement in standing of at least two subjects toward finally securing a professional first or second-class certificate.

So satisfactory has been the progress in English language instruction made since 1927 by the French schools that in all likelihood the language question will soon cease to be a vexed problem with the Ontario educational authorities. In fact, the writer is reliably informed that there is a growing demand on the part of English-speaking residents to have French taught as a subject of instruction in the public and separate

schools of the Province. French is already a subject of instruction in fifth classes of the elementary schools. Obviously a more satisfactory mastery of this language would be obtained if French were introduced earlier in the course of study.

For the satisfactory solution of the language problem in Ontario too much credit can scarcely be given to the Merchant Report. This able document contains no new psychology of language instruction, but it manifests a commendable human insight and substantial common sense. Its whole tenor is suggestive of co-operation and leadership rather than of arbitrary regulations or other products of the bureaucratic type of mind. The application of this Report will probably accomplish the aims of Circular 17 through a policy of enlightened supervision that can be sympathetic without wobbling and firm without domineering. The appeal to reasonableness, to the worthy idea rather than to coercion, is significant of the commissioners' approach to the language problem. The Merchant Report should prove workable both because it is human and because it embodies a sane plan of progressive achievement in language instruction.

There is nothing spectacular either in the letter or spirit of the recommendations offered by the Merchant Commission. No hint of "technocracy," manifesting itself in an accelerated large-scale production of English-speaking French-Canadians, is found. There is no suggestion that the currency of language, as the medium of instruction or communication in the mixed schools of Ontario, should be subjected to artificial or forced inflation. Moreover, the authorities who would successfully carry out the recommendations

of this forward-looking Report must be neither autocrats nor bureaucrats, but clear-sighted educational leaders appreciative of the basic principles of racial tolerance and mutual understanding. Ontario is fortunate in the possession of such leaders.

CHAPTER XII

A GLIMPSE OF THE SCHOOL SITUATION IN QUEBEC

IT was pointed out in Chapter Two that there are, in a strict sense, no "separate" schools in Quebec, but rather "dissentient" schools (Section 93 (2), B.N.A. Act) which may be either Protestant or Roman Catholic according to the faith of the local religious minority. There is, however, a fairly well-marked analogy between the dissentient schools of Quebec and the separate schools of Ontario, Saskatchewan and Alberta in the respect that the denominational minority, whether Protestant or Roman Catholic, in the latter Provinces may establish separate schools just as the religious minority in Quebec may establish so-called dissentient schools.

The influence of denominationalism at least, if not of religion, is more manifest in the school system of Quebec than in the educational systems of Alberta, Saskatchewan and Ontario where state-supported separate schools are found. According to the latest official report (Dominion Bureau of Statistics, 1931, page 77), 8,859 out of 18,318 teachers, or nearly fifty per cent. of those in Roman Catholic schools, and 8,864 out of 20,971 teachers, or about forty-two per cent. of those in all state-supported schools in Quebec, are classed as "religious teachers" or as belonging to "religious orders." Only 5 out of 8,864 religious teachers are classified under "Protestant schools."

The Education Act of Quebec also provides for the recognition, under certain conditions, of the "scholastics of teaching brothers as normal schools." Nine

scholasticates have already been granted this professional recognition. "Still enjoying the privilege of being able to teach without a diploma," states the provincial superintendent's report in commenting on this innovation, "our Brothers willingly offer to submit to the general law and have their competence decided by an official jury whose chairman *ex officio* is the Superintendent."

Section 221 (4) of the Education Act, dealing with the duty of school boards in Quebec, states that it shall be the duty of the latter:

To require that no books be used in the schools under their control other than those authorized, which must be the same for all schools in the municipality. If they apply for the services of a teaching Catholic congregation, the school commissioners or trustees may make a contract with such congregation respecting the books to be used in the school entrusted to such congregation; provided, however, that such books form part of the series approved by the Roman Catholic Committee of the Council of Education. The rector or priest in charge of a Roman Catholic church shall have the right to choose the books relating to religion and morality, for the use of the pupils of his religious belief, and the Protestant Committee shall have the same powers as respects Protestant schools.

Officials in Quebec who manage the schools of the religious majority are known as "commissioners." Five commissioners are in charge of the majority schools in each municipality or parish, while three "trustees" administer the "dissentient" schools of the religious minority within the same area.

In a sense Lord Durham's stricture with regard to the French of early nineteenth-century Canada—namely, "they remain an old and stationary society in a new and progressive world"—might, with some modification, be applied to the twentieth-century

schools of the Quebec Roman Catholic majority. These schools are admittedly conservative in spirit and curricula, but, in the light of their own objectives, they are far from inefficient. As indicated by the figures quoted in the early part of this chapter, the Roman Catholic schools of Quebec are under the influence of Church equally as much as of State. Nor has this blending of sectarian with secular control proved an inharmonious one. Educational evolution in the Province of Quebec has been unique in Canada. This evolution has been neither "neutral" nor "Godless," but of a distinctly ecclesiastical nature. Progressive educational currents that set the sails of the other provincial school systems, especially during the last thirty years, have received but scant recognition from the Roman Catholic educational authorities in Quebec. Nevertheless, while innovation in educational practice has in large measure been resisted, in no Province does the religious minority enjoy greater educational freedom than in Quebec. Though difficulties in matters of school administration have inevitably arisen, Quebec has never had its Manitoba School Question or such protracted litigation and bad feeling as were engendered in Ontario by the ill-conceived and ill-fated Circular 17 discussed in the previous chapter. Indeed, there is an atmosphere of maturity and of massive common sense about the administration of the Quebec school system that tends to avert such occasions for racial and sectarian friction. The school system of Quebec may not, with the exception of its municipal unit of organization and official discernment in matters pertaining to foreign language instruction, be highly "modern"; nevertheless, it is quite substantial and well adapted to the educational needs and prepossessions of the

constituency it serves. Indeed, no system in Canada provides a better criterion for appraising the purport and effectiveness of Section 93 of the British North America Act. In no Province is the spirit of the Fathers of Confederation, with reference to a satisfactory solution of the thorny problems arising from the educational "rights and privileges" of religious minorities, better exemplified than in the Province of Quebec.

Reference was made in Chapter Ten to the financial and educational waste resulting from the small district type of school organization, found in Ontario and other Provinces, whereby a board of three trustees manages the affairs of each rural school district. However conservative the school system of Quebec may be in other respects, it shares with British Columbia the distinction of having the most economical, progressive and effective unit of school administration in Canada, namely, the municipal unit. The majority of school municipalities in Quebec are coterminous with the civic municipality or with the parish. Reasonable equalization of the burden of school support, as between the wealthier and poorer districts in the municipality, is more readily obtainable under the Quebec and British Columbia systems than under the small district type of school organization. From one to "half a dozen or more" schools in a Quebec municipality may be managed by a rural board of commissioners, while almost as many schools may be administered by the rural board of trustees.

On the recommendation of the Provincial Superintendent of Education, school municipalities may be constituted by the Lieutenant-Governor in Council. School commissioners or trustees are required by law

to divide their respective municipalities into school districts—subject to the condition that each district shall contain a minimum of twenty children between the ages of five and sixteen. When the number of pupils in a district falls below ten, the board may close the school and “if necessary, may have the children conveyed free of charge to one or more schools of their municipality.”

In an address to the Ontario teachers in the spring of 1929, Hon. G. H. Ferguson, then Premier and Minister of Education, is reported to have stated that of the 5,000 rural schools in Ontario, sixty-five per cent. were operating at low efficiency. Two hundred schools had an attendance of five pupils or fewer, while nine hundred had an attendance not exceeding ten. The cost of educating pupils in these schools ranged from \$160 to \$260 a year as against an average of \$80 per pupil for Ontario as a whole. Such was the price of local pride or ignorance in matters of school administration! Nor, according to reports, have conditions in sections of rural Ontario greatly improved in the interval since 1929, notwithstanding the stimulus of permissive legislation providing for the establishment in Ontario of the larger unit of school administration. From such anomalies and extravagances as the above, largely the result of a perverted sense of the alleged virtues of the primitive, small district type of organization, Quebec is fortunately free.

Quebec has no minister of education. The chief educational official in the Province is an appointed superintendent who administers the affairs of the department of education. The superintendent is assisted by two secretaries, one Protestant and the other Roman Catholic, who, under the superintendent,

have general control of the department of education and exercise the powers assigned to them by the Lieutenant-Governor in Council. The superintendent is also president of the Council of Education, composed of two committees, one consisting of Protestants and the other of Roman Catholics, who deal with matters pertaining to their respective schools. Questions affecting the joint interests of the two classes of schools come under the jurisdiction of the Council as a whole. The two secretaries, as deputy heads of the department, are joint secretaries of the Council. The Protestant secretary also acts as director of Protestant education in the Province.

Each committee of the Council sits separately. In addition to their general duties and powers regarding such matters as the administration of schools, discipline, division of the Province into inspectoral districts, the government of normal schools and examinations of candidates for teachers' licenses or for the office of school inspector, the committees must approve all textbooks for use in the schools of their respective religious beliefs. With the exception of certain bishops and other dignitaries of the Roman Catholic Church, who are members *ex officio* of the Roman Catholic committee, the personnel of each committee is appointed "during pleasure" by the Lieutenant-Governor in Council. Six persons may be co-opted by the Protestant committee, while the provincial association of Protestant teachers may elect one of their number to associate-membership in this committee for the ensuing year.

Roman Catholic priests and Protestant ministers are legally entitled to visit the schools of their respective religious beliefs. On the occasion of such visits these churchmen are authorized "to have communica-

tion of all regulations and other documents relative to each school, and to obtain any information concerning it." Indeed, in no Province is the influence of the clergy in the state-aided school so dominant as in Quebec. Probably in no other Province would such clerical jurisdiction over school affairs be tolerated.

Traditions and practices in the other Provinces, especially with reference to the educational status of women, differ widely from those in Quebec, which still disqualifies a woman, whether a property-owner or not, for election as a school trustee. At the same time "every resident husband of a woman who is a ratepayer" is, subject to a few simple conditions such as being able to read and write, "eligible as a school commissioner or trustee." On the other hand, "every Roman Catholic curé and every minister of any religious faith ministering in the school municipality, *although not qualified with respect to property*," is eligible for the office of school trustee or commissioner. Nor are women in Quebec legally entitled to vote. The subordinate official status of the Quebec female, in contrast with the implied superiority of the male, is one element of conservatism that the Province will probably outgrow. Many English-speaking women of Quebec chafe under such glaring discrimination. Possibly the schools of Quebec are as efficiently administered under the present male régime as if women ratepayers had the vote or were allowed to act as trustees or commissioners. This observation, however, if true, would equally apply to an appreciable percentage of males who doubtless might be disfranchised without adversely affecting the efficiency of the educational system. Obviously certain outmoded traditions or prejudices in Quebec die a painfully slow death. Indeed, the legal disability

imposed on Protestant women—by a government overwhelmingly Roman Catholic in complexion—to act as trustees or commissioners of Protestant schools stands out in marked contrast with the spirit of tolerance and freedom otherwise generally observable in the Education Act of Quebec.

This spirit of freedom and tolerance is manifest in unusual degree in connection with the treatment accorded "dissentients," to whom further reference should be made. As previously stated, dissent in Quebec is regarded largely as a matter of personal right. Any number of ratepayers "professing a religious belief different from that of the majority of the ratepayers" may, upon giving due notice, withdraw from the school under the commissioners and establish a "separate corporation under the administration of school trustees." So fluid are the conditions governing dissent that, when the dissentients become the majority in a school municipality, they may organize themselves "as a corporation of school commissioners" who are five instead of three in number. Under these conditions the former majority, now reduced to a minority, "may at once declare itself dissentient" by giving appropriate notice to the superintendent of education and to the chairman or secretary of the board of school trustees. Liberal provisions in the law also permit dissentients in one municipality to unite with those of their religious belief in a neighbouring municipality for the purpose of sending their children to the same school. On the other hand, a dissentient may, by serving notice to the proper authorities to the effect that he professes the religious belief of the majority and "desires to be under the control of the school commissioners," have his status changed to that of a supporter of the school

of the religious majority. It will be observed, however, that the type of school, either of the majority or minority, supported by the taxpayer is contingent upon the professed religious belief of the latter. The taxpayer is not entitled under the law to transfer his support to the class of school that happens merely to suit his fancy. As will be explained later, for purposes of school support, Jews are placed in the Protestant panel.

In order to prevent financial evasion, an abuse that otherwise might easily arise under the provisions governing dissent in Quebec, Section 106 of the Education Act provides the following safeguards:

Dissentients shall not be liable for any taxes or school-rates imposed by the school commissioners, except for the assessments for the then current year. . . . or for the payment of debts previously incurred, provided always that such assessments are imposed within six months from the date of the receipt of the declaration of dissent.

The preferential treatment accorded the clergy in matters of public education is well illustrated by Section 68 of the Education Act, which reads as follows:

Unless he has obtained a diploma in virtue of some provision of this Act, no person shall teach in any school under the control of school commissioners or trustees, without being provided with a diploma from a board of examiners, with the exception, however, of ministers and members of either sex of a religious corporation constituted for educational purposes, who shall be exempt.

The Protestant Committee of the Council of Education may, however, by resolution, declare that the persons of its religious belief, so exempted, shall no longer enjoy such exemption; and after the date of such resolution such exemption shall cease.

In September, 1922, the Protestant committee of

the Council of Education withdrew the exemption given under the above section. By virtue merely of their ordination, therefore, Protestant ministers are no longer entitled to teaching licenses.

Experts in school finance would doubtless find much to criticize in the methods adopted by the Quebec government with respect to the distribution of its school grants. The antiquated criterion of pupil enrolment in the previous year still serves as the chief basis for such distribution. Legislative grants for superior education and for poor municipalities are distributed on a somewhat different basis, namely, "according to the respective numbers of Roman Catholics and Protestants in the Province as given in the preceding federal census." In determining the basis of distribution all non-Roman Catholic persons are counted as Protestants. Jewish pupils attend schools under the jurisdiction of the Protestant committee of the Council of Education. According to certain allegations made in the Hirsch Case (discussed below), Protestant schools in Quebec are out of pocket as a result of the above arrangement.

Reference was made in the chapters on Saskatchewan and Ontario to the difficult problem of distributing the taxes of incorporated companies between public and separate schools. It will be remembered that the general basis of such distribution in Saskatchewan, for instance, is the amount of paid or partly paid-up stock or shares held in these companies by Protestants or Roman Catholics. If, for instance, two-thirds of the stock is held by Protestants, then two-thirds of the taxes collected go to the support of the public school and the balance to the separate school—if the latter school, in the instance cited, were Roman Catholic and if the proper notice or

notices had been given. In the absence of the notices specified, all taxes of incorporated companies in Saskatchewan go to the public school. Moreover, it will be remembered that no part of the taxes on public utilities in Ontario is available for separate schools.

Quebec has a unique method of distributing school taxes collected from incorporated companies. The commissioners alone, who represent the schools of the religious majority, collect these "neutral panel" taxes, whereupon a share, based upon the relative number of pupils enrolled in the schools under each board, is allotted to the trustees. In municipalities having two boards of commissioners, the board of commissioners representing the larger number of ratepayers collects these taxes and then shares them with the other board on the basis, not of pupil enrolment, but according to the number of children between the ages of five and sixteen years, "of each religious faith," living in the municipality.

The above method of distribution probably has certain commendable features although, in the Provinces other than Quebec, it would undoubtedly prove unacceptable. One hundred per cent., for instance, of the shareholders of an incorporated company in Quebec might be of the Protestant faith, and yet from perhaps eighty to ninety per cent. of the company's school taxes would go, on the above basis of allotment, to the support of Roman Catholic majority schools. The converse is also possible, but the number of cases in this category would be comparatively small. In the first place, the population of Quebec is overwhelmingly Roman Catholic. Again, the Protestant population of Quebec is reported to be relatively wealthier than the Roman Catholic popula-

tion. According to authentic data, on a *per capita* basis Protestants own a greater interest in incorporated companies in Quebec than is held by Roman Catholics.

Notwithstanding the above apparent objections, however, certain desirable features of the Quebec method of apportioning company taxes should not be overlooked. There is the relatively minor matter of administrative convenience. It is unnecessary in Quebec to inquire into the religious affiliations of shareholders in a company as a basis for distributing its taxes. The process of serving notice on the company, as specified in the Saskatchewan law, is also obviated.

Moreover, under Section 93 of the B.N.A. Act, education is primarily a provincial, rather than a local or even a denominational, matter. Obviously it is in the interest of the state that all children should receive the best education possible. Criticism to the effect that "Protestant money" in Quebec, or taxes collected from companies whose shareholders may be predominantly Protestant, is used largely for the purpose of providing sectarian instruction for Roman Catholic children, is probably exaggerated. Companies are neither Protestant nor Roman Catholic whatever be the denominational affiliations of their shareholders. Companies are impersonal. They have no religious convictions and, in the majority of cases, probably little conscience. Furthermore, the earning powers of a company, which largely determine the valuation of its shares, are appreciably enhanced by the density as well as by the wealth of the population in the community where the company operates. If the population of Quebec were reduced to the number of Protestants in the Province, for instance, it is probable that the value of shares in many of its

incorporated companies would also be considerably decreased. At the same time it is not suggested that the Quebec method of allotting company taxes is either the fairest or the most scientific that could be devised. Under present conditions, however, as the density of population in Quebec is chiefly attributable to the great preponderance of the Roman Catholic majority, the schools of the latter may conceivably be entitled to more favourable consideration, from a financial standpoint, than is accorded Roman Catholic schools in the other Provinces.

While a large number of cases have been before the Quebec courts for the purpose of clarifying various sections of the Education Act, only one school case of outstanding importance (Hirsch Case, discussed below) went to the Judicial Committee of the Privy Council. Indeed, as already mentioned, the school administration of Quebec—however antiquated or conservative it may appear to be in the matter of distributing financial support, or in the recognition of women's altered social and economic status in modern times—has been characterized by a singular absence of sectarian rancour and prolonged litigation over denominational school problems such as caused considerable ill-feeling in Manitoba, Saskatchewan and Ontario during the last forty years. There have been few, if any, noteworthy attempts on the part of the Roman Catholic majority in Quebec to impose any real restrictions, with respect to the teaching of language or religion in the schools of the Protestant minority, such as would justify the pre-Confederation threat of the *Montreal Gazette* mentioned in Chapter Three. In language and religious matters at least there is an atmosphere of freedom about the administration of the Quebec school system that reflects the

spirit of a more mature—and perhaps more tolerant—civilization than that found in certain English-speaking Provinces where denominational schools are established.

Reference was made in the early part of this chapter to the fact that, under Section 93 (2) of the B.N.A. Act, dissentient, but not separate, schools enjoy a legal existence in Quebec. This subsection reads as follows:

All the Powers, Privileges and Duties at the Union by Law conferred and imposed in Upper Canada on the Separate Schools and School Trustees of the Queen's Roman Catholic Subjects, shall be and the same are hereby extended to the Dissentient Schools of the Queen's Protestant and Roman Catholic Subjects in Quebec.

The distinction between "dissentient" and "denominational" (for which the term "separate" is commonly used in the English-speaking Provinces) schools is significant. As pointed out by their Lordships in the Hirsch Case, discussed below, a religious minority in Quebec is required to declare its "dissent" before becoming entitled to the establishment of so-called dissentient schools. Such formal declaration of dissent, on the other hand, is not necessary for the creation of denominational or separate schools, which come under the protection of a different provision of the Confederation Act, namely, Section 93, Subsection 1.

Furthermore, a statute of 1861, in force in Lower Canada at the time of Confederation, had, in effect, set up two educational systems in the Province: (a) for Lower Canada outside of Montreal and Quebec City; and, (b) for Montreal and Quebec City. According to the decision of their Lordships in the Hirsch

Case (1928), the above statute did not divide the schools of the above two cities into majority and minority schools, as in the rural areas of the Province, "but into Roman Catholic and Protestant." Hence these urban schools are not dissentient but denominational, and, as already stated, they come under the protection of Section 93 (1) of the B.N.A. Act. Their Lordships also declared that the term "Protestant" in the statute of 1861 could not be construed as meaning "non-Catholic" and hence including Jews. It will thus be seen that the Protestant schools of Montreal and the Roman Catholic separate schools of Toronto or Regina, for instance, enjoy similar privileges by virtue of the same constitutional provision—Subsection 1 of Section 93 of the B.N.A. Act. Subsection 2 of Section 93 applies primarily to dissentient schools in rural areas of Quebec.

Part X of the Education Act of Quebec deals with the education of persons professing the Jewish religion. As already mentioned, Jews in the Province of Quebec are, for school purposes, to be treated "in the same manner as Protestants." Sections 576, 577, 579 and 581 of the Education Act, which are relevant here, read in part as follows:

576. Any provision to the contrary notwithstanding, in every municipality of the Province, whether governed, as regards schools, by this act or by a special act, persons professing the Jewish religion shall, for school purposes, be treated in the same manner as Protestants, and, for such purposes, shall be subject to the same obligations and shall enjoy the same rights and privileges as the latter.

577. In every municipality in the Province, persons professing the Jewish religion shall pay their school taxes to or for the benefit of the school corporation in such municipality which is under the control of the Protestant Committee of the Council of Education, and if there be no

such corporation, then to the sole school corporation existing therein.

579. Whenever, under the law applicable to any municipality, the moneys arising from school taxes are divided between the Roman Catholic school corporation and the Protestant school corporation, in the relative proportion of the Roman Catholic and Protestant population, persons professing the Jewish religion shall be counted as Protestants.

581. The children of persons professing the Jewish religion shall have the same right to be educated in the public schools of the Province as Protestant children, and shall be treated in the same manner as Protestants for all school purposes.

Jewish children, however, are not compelled "to read or study any religious or devotional books or to take part in any religious exercises or devotions" to which their parents or guardians may object.

Some doubt eventually arose as to the legality of Sections 576 and 581 above, which first appeared as Sections One and Six, respectively, of the Quebec Statute, 3 Edw. VII, Chap. 16. Between 1903 and 1923 the number of Jewish children in the Protestant schools of Montreal was alleged to have increased from 2,144 to 11,974. Furthermore, the taxes and allowances received by the Protestant School Board in respect of Jewish children were claimed to be considerably less than the cost of educating these children. Although the Province passed an Act in 1922 increasing the subvention for Protestant schools out of the provincial school fund, this step did not end the dispute, whereupon the Lieutenant-Governor in Council of Quebec appointed a commission, consisting of Jews, Roman Catholics and Protestants, to investigate the difficulty. As the members of this commission were divided in opinion regarding the validity of the above statute of 1903, an appeal on

the disputed points was submitted to the courts. The appellants in the case—Hirsch and Another vs. Montreal School Commissioners and Others (Judicial Committee of the Privy Council, February 2, 1928, *Times Law Reports*, 1928, page 287)—were two members of the commission appointed by the Lieutenant-Governor of Quebec. Their Lordships of the Privy Council affirmed, with few variations, a judgment of the Supreme Court of Canada (S.C.R., p. 246, 1926).

For purposes of the present discussion the main points of the Privy Council decision were as follows:

The Statute of 1903 was held to be valid "except so far as it would enable persons professing the Jewish religion to be appointed to the Protestant Board of School Commissioners in the City of Quebec or Montreal or to any Protestant Board of Examiners. . . ." Moreover, while Jewish children are entitled to attend the Protestant schools of Montreal, the Protestant Board of School Commissioners of this city is not obliged to appoint Jewish teachers to its schools should the latter be attended by Jewish children. Nor is the Legislature of Quebec competent to pass legislation providing that Jewish teachers shall be appointed to the above positions. Furthermore, as the Protestant Committee of Public Instruction is *now constituted*, while only Protestants are eligible for membership, nevertheless the personnel of this Committee, which is a "creature of post-union legislation" (i.e. since 1867), is "subject to legislative control."

Perhaps the two most important phases of the Privy Council decision, from an educational standpoint at least, are, *first*, that the Legislature of Quebec can pass legislation to establish separate schools for persons who are "neither Protestants nor Roman

Catholics," but that such legislation could not interfere with the rights or privileges enjoyed by "Roman Catholics or Protestants as a class at the Union"; and, *second*, "the Protestant community, although divided for some purposes into different denominations, is itself a denomination and capable of being regarded as a 'class of persons' within the meaning of Section 93 of the Act of Union." Furthermore, it was pointed out that provincial legislation establishing Jewish separate schools need not prejudice the rights or privileges enjoyed by Protestants or Roman Catholics "as a class of persons at the union." Indeed, according to the facts alleged regarding the costs of educating Jewish children, the schools most concerned, namely, those of the Protestant minority, would probably benefit from the establishment of Jewish separate schools.

An Act was passed by the Quebec Legislature in 1930 (20 Geo. V, Cap. 61) which purported to establish a Jewish School Commission on the Island of Montreal. Such a creation had in it the germ of a separate school system, which, however, was not regarded with favour by the Roman Catholic Church. Moreover, the Jews would have had difficulty in financing the new system. The above Act, therefore, was repealed and the further one (21 Geo. V, No. 32) substituted, which validated an agreement between the Jewish and Protestant School Commissions. This agreement did not materially alter the *status quo* under the Education Act of the Province. The confirming Act, which continued the existence of the Jewish School Commission created in 1930, fixed the annual *per capita* cost of educating Jewish children at seventy-five dollars for a period of five years from July 1, 1931.

A significant clause in the agreement between the

two Commissions reads as follows: "The policy of the Protestant Board is to consider Jewish applicants eligible for appointment to the teaching staff and for promotion. This declaration of policy shall not be construed as in any way affecting the rights, powers, authority and duties of the Protestant Board." (Clause 6.)

It will thus be seen that the above Act gives the Jews bare legal status but nothing solid. There is no real recognition of a separate confessional group.

The spirit of freedom in matters of language instruction both in the Protestant and Roman Catholic schools of Quebec stands out in marked contrast with the tone of the famous Circular 17 discussed in the previous chapter dealing with Ontario's bilingual problems. It may, of course, be alleged that social, racial and language conditions in Quebec and Ontario are so dissimilar as to be scarcely comparable and hence that the educational objectives of the school systems involved should be viewed from quite different angles. To the impartial observer it probably would appear more desirable for the young French Canadian, who aims adequately to equip himself for success in the business or professional world of to-day, to acquire a reasonable knowledge of English than for the English-speaking Canadian to acquire a similar mastery of French. At the same time, the attainment of a fair knowledge of both languages might well be considered an educational objective desirable in the interests of good citizenship. Widespread ignorance on the part of English-speaking Canadians of the mother-tongue of approximately twenty-five per cent. of the citizens of Canada constitutes a serious barrier to mutual understanding. The converse is even more true. No French-speaking child in Canada is being

justly treated if those responsible for his education permit him to reach maturity without acquiring a fair mastery of the English language.

The above statements may appear to be obvious counsels of perfection. True it is, however, that, in certain of the English-speaking Provinces that have followed antiquated and wasteful methods of French language instruction in the high school grades, such counsels have lapsed into little more than high-sounding platitudes more honoured in the breach than otherwise. Yet more hopeful signs are not wanting. Within recent years this unfortunate condition of foreign language instruction has been somewhat improved through the adoption in greater degree of the direct method of teaching as well as by placing the study of French a year or two earlier in the grades.

The Protestant Committee of the Council of Education in Quebec has adopted a progressive policy in regard to the teaching of French in the schools under its jurisdiction. These schools ordinarily commence instruction in French in Grade IV and continue it to the end of Grade XI. The above statement applies in general to the policy of the Roman Catholic Committee. French is the language of instruction in French Roman Catholic schools, while English is usually introduced as a second language subject in the third year of the course. In English Roman Catholic schools the reverse is largely the case, with French introduced in the third year as a second language subject. In the majority of schools the direct or oral method of instruction is chiefly used. In mixed communities, where French and English pupils attend the same schools, the provincial department of education requires the engagement of bilingual teachers.

Specialists in French are trained for the high schools of Quebec, and substantial government grants (\$150 or \$200 annually) are available for each high school under the Protestant Committee employing a qualified specialist in this subject. Two conditions govern these grants. The specialist must be "responsible for the French in all grades of the school, and must give all his time to the teaching of this subject." In the second place, the so-called "direct method of teaching French" must be used. The prime object of this method is to give the pupil a speaking, as well as a writing, command of the new language. The adoption of a similar measure for the improvement of the quality of foreign language instruction in the high schools of the other Provinces would be a step in the right direction.

In conclusion, it may be said that the Province of Quebec, apart from its municipal unit of school organization and its generally efficient attack on the problem of language instruction in the elementary and high schools of Protestant and Roman Catholic communities, has little in the nature of progressive education to offer the other Provinces. One important exception, however, to the above statement should be made: the lesson of tolerance in the treatment of religious minorities. In strange and marked contrast with this salutary lesson stands out Quebec's mediæval discrimination against women who, as previously stated, are, among other disabilities, disqualified from voting in provincial elections or from holding the office of school commissioner or trustee. Obviously, Quebec is the most male-ridden as well as church-ridden Province of Canada—a condition that may partly account for its conservatism in public education.

On the whole, however, Canada needs the Quebec

influence. "The French-Canadian threads in our national fabric are stout and colourful," writes an observant English-speaking Canadian. "They add strength to the weave and gaiety to the pattern. Without them, Canada would be less of a nation than she is. Without them, Canada would not be the same sort of nation. The necessity of adapting ourselves, at every stage in our constitutional growth, to the needs and demands of our French-Canadian fellow citizens has, undoubtedly, given us a more flexible form of government than we should otherwise have had. The very difficulties of the situation have worked to our benefit, making us more resourceful and more tolerant."

The spirit of Circular 17, discussed in the previous chapter, is foreign to that of the Quebec school system. Such an autocratic document could never have passed muster in Quebec. When certain of the English-speaking Provinces have advanced beyond the pioneer stage in their educational thinking, doubtless such arbitrary regulations as some of those contained in the ill-conceived and ill-fated Circular 17 will be relegated to the limbo of a merciful oblivion, to be resurrected and exposed at infrequent intervals by research students seeking curiosities in the field of educational futilities. With the exception of its male-deifying school legislation, Quebec will probably be spared the embarrassment of such exposure by an impartial, if somewhat disdainful, posterity.

CHAPTER XIII

BIBLICAL INSTRUCTION IN THE PUBLIC SCHOOL¹

AS probably is apparent from the discussion in several of the previous chapters, the question of biblical instruction in the public or common school is a particularly controversial one. We have seen (Chapter Three) that the demands of the Protestant minority in Quebec for the safeguarding of their denominational school privileges led to the insertion of Section 93 in the British North America Act and indirectly to the ultimate establishment of separate schools in three other of the most populous Provinces.² Likewise insistence on the part of certain taxpayers that biblical instruction should be imparted in the common school has led to bitter animosities, particularly in those public school districts where children of different religious denominations are found in the same classrooms.

It is not the purpose of the present chapter to enter into a detailed analysis of the arguments in favour of, or of those opposed to, biblical instruction in the public school. As stated in Chapter One, great differences of opinion regarding the relative spheres and functions of the home, church and school in the matter of imparting biblical knowledge exist in every Province of Canada. Regulations of the various provincial departments of education governing religious instruction in the public school are enu-

¹ For an extensive "Religious Education Bibliography" see Pamphlet 33, Office of Education, United States Department of the Interior, Washington, D.C.

² In Ontario, Saskatchewan, and Alberta, as well as in Quebec; also in Manitoba in full-fledged activity from 1871-90.

merated below and in Appendix V. Practically all these regulations debar during regular school hours all instruction of a distinctly sectarian character. It would appear, therefore, that there is a consensus of opinion among the majority of thoughtful people to the effect that no instruction of a denominational character should find a place in the state school. At the same time there also seems to be reasonable unanimity throughout Canada on one important point; namely, that the fundamental tenets of religious belief—if such can be agreed upon by the churches—should be included in the public school programme and taught by persons, frequently other than the classroom teachers, who can be “trusted to rise above sectarian bias.”

It is commonly asserted by advocates of biblical teaching that the school, in monopolizing five or six hours daily of the pupils' time, has practically excluded the church, if not the home, from giving the boys and girls effective biblical instruction, since one hour a week in the Sunday school is alleged to be wholly insufficient for this purpose. The school, therefore, it is contended, should find a place in its curriculum for at least optional instruction in biblical literature which has been described as “the most majestic thing in our literature and the most spiritually living thing we inherit.” Furthermore, it is frequently alleged, the above end should be attained even if the result means increasing the time spent in school by an extra hour or forty-five minutes daily.

It seems doubtful, however, whether some of the advocates of teaching the bible in school, either as literature or as the fountain-head of all true moral values, have taken sufficiently into account the crucial importance of the efficiency of the teacher, who

is at once the motive power and source of inspiration in the imparting of literary, ethical or other values. The blasé or unimaginative teacher can destroy the effect of the most inspirational biblical passages. While it may be contended that the above observation applies also to the teaching of contemporary or classical literature as well as to that of the bible, it should not be forgotten that the average teacher in the ordinary Canadian public school has had a better training in general than in biblical literature. While he might teach the former only moderately well, he would probably teach the latter much less efficiently. Moreover, as Professor William Ernest Hocking, of Harvard, recently declared (see *Christian Science Monitor*, December 3, 1932), "inasmuch as values can never be known by being known about, but rather by being felt, the personal transmission of values from teacher to student is of the utmost importance." Obviously the ability of the teacher of the bible to "impart values" is of great importance. At least the emotions, if not the convictions, of the learner should be stirred and elevated by the efficient biblical instructor. The imparting of mere knowledge or techniques, on the other hand, while important, rests on a lower psychological level than the effective appeal to the emotions through stimulation of the imagination. The former, or knowledge-imparting process, may equip the student for passing formal examination tests, but the latter or inspirational teaching transforms character through the moulding of attitudes, ideals and appreciations. True it is, the teaching of all subjects, in theory at least, should, but the teaching of biblical literature *must*, fall within the latter or emotion-refining category, if biblical instruction is not to deteriorate into a formal and lifeless affair.

As indicated below, probably three teachers out of four find themselves inadequately equipped to impart biblical instruction efficiently. If, therefore, the bible—as a source of inspiration and moral values rather than as a mere textbook in reading, often without comment—is to be introduced into the classroom, it would appear that the clergy must come to the rescue of the public school. In Ontario, for instance, official provision is made for clerical co-operation in the above respect.

The regulations of the various provincial departments of education governing biblical instruction in the public school are worthy of note. In certain instances it will be observed that the word “religious” is used interchangeably with “biblical.” While the real difference in meaning between these terms is obviously a vital one, it is doubtful whether, in actual practice in the classroom, any appreciable significance is attributed to this distinction.

In the Province of Quebec, as stated in Chapter Two, the dissentient schools of the Protestant minority are more secular in character than the denominational schools of the Roman Catholic majority. Protestant dissentient schools in Quebec include the high school grades as understood in the English-speaking Provinces. These schools are under the control of a Protestant Committee which has formulated the following regulations regarding religious instruction in the professional school for teachers.

53. One period a week shall be given to religious instruction within school hours by a regular member of the staff as a regular part of the school course with special relation to the subject matter prescribed by the Course of Study and the methods of teaching it; and one period a week after four o'clock shall be given by assisting clergymen to inspirational and devotional aspects of religious instruction, all

in accordance with the scheme provided from time to time by the Teachers' Training Committee and approved by the Protestant Committee.

54. Teachers in training will be required to state with what religious denomination they are connected, and in addition to punctual attendance at weekly religious instruction each student will be required to attend public worship at least once every Sunday at his own church, when possible.

The above regulations apply to teachers in training rather than to elementary and high school pupils. It is a relatively simple matter to control the admission to training school and the external religious observances of student teachers who are anxious to qualify for admission to the teaching profession. Unless they observe the regulations, they may be summarily dismissed. The inclusion of the words, "when possible" in Regulation 54, however, supplies a convenient escape mechanism both for students and administrative authorities.

The following regulations of the Protestant Committee apply to elementary and high school pupils. So-called "public" schools include schools for Jewish children in Quebec who, for school purposes, are treated in the same manner as Protestant children. Regulation 138 below provides the necessary exemption from religious instruction for Jewish and other non-Protestant children:

138. Religious instruction shall be given in all public schools, but no person shall require any pupil in any public school to read or study in or from any religious book, or to join in any exercise of devotion or religion, objected to in writing by his or her parents or guardians.

139. Every Protestant school shall be opened each day with the reading of a portion of the Holy Scriptures, followed by the Lord's Prayer.

140. In all grades of Protestant schools the first twenty minutes of each day shall be devoted to the opening

exercises (prescribed by the preceding Regulation), instruction in morals, and Scripture History. The Holy Scriptures and the authorized textbooks shall be used for this purpose. No denominational teaching shall be given in such schools.

The regulations governing religious and moral instruction and religious exercises in the public schools of Ontario appear in Appendix V. These regulations are substantially the same for high and continuation schools which are attended by pupils of all denominations. The exemptions in Ontario, it might be added, seem sufficiently numerous and generous to meet the conscientious scruples of practically all denominational groups.

Provision for religious instruction in the public, or national, schools of Manitoba has already been discussed in Chapters Four and Five. A perusal of these chapters should make it clear that quite as full a measure of religious or denominational instruction is permissible in the public schools of Manitoba as in those of Saskatchewan or any other English-speaking Province.

In the public schools of Alberta and Saskatchewan the school board is empowered to require the repetition of the Lord's Prayer during the opening period. In both public and separate schools the last half-hour in the afternoon may be devoted to biblical instruction. It is obvious that the Roman Catholic separate schools would always avail themselves of this provision—the chief separate school right they possess in Alberta and Saskatchewan—while a small number of public schools in each Province have sometimes used the last five or ten minutes before closing time for bible reading. Reading of the bible in the latter cases is practically always determined by agreement between the teacher and the board of trustees.

The clauses governing religious instruction in Alberta and Saskatchewan are set out in the following sections of the school law:

Except as hereinafter provided, no religious instruction shall be permitted in the school of any district from the opening of such school until one half-hour previous to its closing in the afternoon, after which time any such instruction permitted or desired by the Board may be given.

It shall, however, be permissible for the Board of any district to direct that the school be opened by the recitation of the Lord's Prayer.

Any child shall have the privilege of leaving the school room at the time at which religious instruction is commenced as provided for in the next preceding section, or of remaining without taking part in any religious instruction that may be given, if the parents or guardians so desire.

No teacher, school trustee or inspector shall in any way attempt to deprive such child of any advantage that it might derive from the ordinary education given in such school, and any such attempt on the part of any teacher, school trustee or inspector shall be held to be a disqualification for and voidance of the office held by him.

A section was added to the school law of Saskatchewan in 1930 (Section 248, Cap. 131) which, with the partial exception of a corresponding section in the school law of New Brunswick, is without parallel in the history of education in Canada. Section 248, which prohibited the display of emblems of religious denominations "on any public school premises during school hours," reads as follows:

248. (1) No emblem of any religious faith, denomination, order, sect, society or association, shall be displayed in or on any public school premises during school hours, nor shall any person teach or be permitted to teach in any public school while wearing the garb of any such religious faith, denomination, order, sect, society or association.

(2) Any teacher violating the provisions of subsection (1) shall be guilty of an offence and his certificate may be

suspended or cancelled by the minister, and he shall also be liable on summary conviction to a penalty not exceeding \$50.

(3) Any trustee violating the provisions of subsection (1), or permitting a violation thereof, shall be guilty of an offence and liable on summary conviction to a penalty of not less than \$25 and not more than \$100; and, if convicted, shall be disqualified from holding the office of trustee for such period as the minister may by order determine.

(4) The Minister shall, if satisfied that the board of trustees of any public school district has permitted a violation of subsection (1), order that the district shall not receive any grant out of money appropriated by the Legislature, in respect of the period of violation, in which case no such grant shall be made.

(5) Any sum of money expended by a board of trustees, or by any officer thereof, in payment of the salary of a teacher who has committed a violation of subsection (1), and any sum of money lost by a district through non-payment of grants under subsection (4), may be recovered for the district in the manner provided by section 239, 1930, c. 45, s. 1.

The reasons underlying the inclusion of this section in the school law were issues in the provincial election campaign of 1929 and gave rise to extreme bitterness between the rival sectarian, political and racial groups in Saskatchewan. Dr. J. T. M. Anderson, now Premier of Saskatchewan and Minister of Education, lost no time in carrying out his Wentworthian policy of "Thorough" after his party and the Progressives had defeated the Liberals at the polls. It should be noted, in the first instance, that Section 248 applies only to the public schools of Saskatchewan. There is little doubt but that this section would have been *ultra vires* of the provincial Legislature and null *ab initio* had it been made applicable to the separate schools of the Province. If, however, the wearing of the garb in the classroom or the display of religious

emblems is a "right or privilege with respect to denominational schools," it also seems apparent that separate school privileges, of a strictly denominational character, should not be introduced in the public schools. While certain provisions of the above section may appear unduly drastic in seemingly trivial details, it should also be recognized that the question at issue, if dealt with at all, should be attacked in a thoroughgoing manner.

The position taken by the sponsors of Section 248 was that Saskatchewan, from a racial and religious standpoint, is a cosmopolitan Province in which the public school is the only common meeting-place for the children of all nationalities and the chief factor in racial assimilation. If the public school, therefore, was not to lose its effectiveness as the chief instrument in the development of mutual understanding between creeds and classes and of "national solidarity in the creation of an intelligent citizenry," nothing should be permitted that would in any degree imperil the efficiency of this national institution. Particularly, it was alleged, should all taint of sectarianism be banished from the public school. According to a press statement reported to have been made by Premier Anderson, there were in Saskatchewan in 1930 thirty-three public schools with seventy-six departments in which teachers wore the denominational garb. Obviously these teachers were practically all of the Roman Catholic faith. Section 248, however, applies to other denominations as well as to Roman Catholics. Furthermore, it was reported that forty-two out of forty-five school inspectors in Saskatchewan were in favour of banishing the garb and religious emblems from the public school.

The Liberals, on the other hand, proclaimed the

principles of tolerance and compromise. It was not the part of high statesmanship, they insisted, to banish the garb or religious emblems from the public school unless the minority (generally composed of Protestants) should protest against their display in the classroom. Statistics were quoted to show that in Saskatchewan the ratio of teaching nuns to the total teaching force of the Province was one to fifty-four; in Manitoba, one to forty-six; and in Ontario, one to sixteen. As is usual in political exigencies, allusions were made to conditions in Massachusetts and elsewhere to show that educational conditions in Saskatchewan were in a comparatively healthy condition. This other-province argument in educational questions, while illuminating, should not be considered very seriously. Each Province is responsible for the administration of its own school system in the light of its own peculiar conditions and needs. If, by analogy, a contagious disease had become an epidemic in Saskatchewan and Manitoba, but, let us assume, fifty per cent. worse in the latter Province than in Saskatchewan, such a condition of affairs could not reasonably be invoked to justify inaction or inefficiency on the part of the Saskatchewan health authorities. Because educational or other conditions may be worse in Province A than in Province B, this situation does not justify conditions in the latter Province being unnecessarily bad.

The writer is not suggesting that educational conditions in Saskatchewan previous to the last election were in an unhealthy condition. But he does condemn the "other-province" argument which, if taken seriously, is inimical to a high degree of efficient administration. If such a principle were commonly accepted in the administration of justice, for instance,

only the worst criminals, or those unable to prove that others surpassed them in crime, would be adequately punished. Moreover, if the alleged defects of other provincial administrations are to be invoked for purposes of defence or justification of official activities, then it would seem reasonable to assume that the virtues and successes of these other jurisdictions should also be placed in the balance.

In New Brunswick "all schools," reads the school law, "conducted under the provisions of this Chapter (Section 119, 1922, C. 5) shall be non-sectarian." By referring to Chapter Three the reader will find that in 1871 New Brunswick officially, if not entirely in practice, eliminated the last vestige of sectarianism in its common school system.

The regulations of the New Brunswick department of education in relation to biblical and moral instruction in the common school, as well as to the display of emblems in the schoolroom, appear below and in Appendix V.

REGULATION 21.—Symbols or Emblems in the School Room: Symbols or Emblems distinctive of any national or other society, political party, or religious organization, shall not be exhibited or employed in the School-room in its general arrangements or exercises; but nothing herein shall be taken to refer to any peculiarity of the Teacher's garb, or to the wearing of the Cross or other emblem worn by the members of any denomination of Christians or temperance organizations.

REGULATION 22.—Privilege of Teachers with respect to opening and closing exercises of Schools: It shall be the privilege of every Teacher to open and close the daily exercises of the School by reading a portion of Scripture (out of the common or Douay version, as he may prefer), and by offering the Lord's Prayer. But no teacher shall compel any pupil to be present at these exercises against the wish of his parent or guardian, expressed in writing to the Board of Trustees.

The above Regulation 21 bears the closest resemblance to Section 248 of the School Law of Saskatchewan of any provision of the school ordinances in Canada. A noteworthy point of difference, however, will be observed. Regulation 21 of the New Brunswick Code expressly safeguards one provision that Section 248 of the Saskatchewan School Law explicitly prohibits. In New Brunswick the wearing of the teacher's garb, cross or other emblem "worn by the members of any denomination of Christians" shall not come under the ban. Moreover, it will be noted that this concession extends to Christians only. Presumably teachers belonging to the Jewish or other non-Christian faith are not accorded the privilege of wearing in the schoolroom a distinctive garb or other insignia of their class or sect. In a specific sense the prohibition in the New Brunswick Regulation refers primarily to the schoolroom, which shall not be marred or decorated with symbols or emblems distinctive of any political, sectarian or national organization. In Saskatchewan, on the other hand, the prohibition is more general and applies both to schoolroom and teacher.

Section 97 of the Public School Act of Prince Edward Island also states that the schools of the Province shall be non-sectarian. This section reads as follows:

97. All schools conducted under the provisions of this Act shall be non-sectarian, and the Bible may be read in all such schools and is hereby authorized, and the teachers are hereby required to open the school on each school day with the reading of the Sacred Scriptures by those children whose parents or guardians desire it, without comment, explanation or remark thereupon by the teachers; but no children shall be required to attend during such reading as aforesaid unless desired by their parents or guardians.

This section requires no comment.

The school system of Nova Scotia, which also is non-sectarian, has been singularly free from denominational difficulties.

British Columbia is the only Province in which the reading of the bible in the public school is not permissible. This Province has sought to safeguard its future from sectarian school difficulties by passing Section 158 of the school law, which, with Section 157, reads as follows:

157. (1) Subject to subsection (2), all public schools shall be free, and shall be conducted on strictly secular and non-sectarian principles. The highest morality shall be inculcated, but no religious dogma nor creed shall be taught. The Lord's Prayer may be used in opening or closing school.

158. No clergyman of any denomination shall be eligible for the position of Superintendent of Education, Inspector, teacher, or trustee under this Act.

Further reference to the question of biblical instruction in the public schools of British Columbia is made below. The present (1932) Minister of Education in British Columbia, himself a clergyman, is reported recently to have said:

Religious training is properly the work of religious teachers and organizations working in conjunction with the parents. Again, I say, the people of British Columbia would strongly resent any attempt on the part of the Government to take up the work of religious education.

The statement was made earlier in this chapter that the imparting of biblical instruction in the classroom would probably prove largely ineffective unless the clergy came to the aid of the schoolman. Even with this assistance the process of religious education must remain but partially complete. Situations that call forth desirable moral action and thus help in the development of effective controls of

conduct must also be provided through the co-operation of the home and community. Moreover, it is commonly alleged that the clergy, in their zeal for saving souls, too often create discords and destroy friendships among citizens of the community. The presence of the cleric in the classroom of the public school, even after school hours and for only a few hours a week, arouses suspicion and prejudice in the minds of certain taxpayers who strenuously insist upon a clear line of demarcation between school and church and are ever ready to resent all evidences, real or imaginary, of clerical interference in the common school.

If evidences of growing agnosticism among a section of the Protestant clergy in the United States are also present in Canada, it may reasonably be expected that the clergy of America will soon have cast off their sectarian bias along with their evangelical zeal and thus have qualified as acceptable biblical instructors in state schools. For it seems apparent, from evidence stated below, that the old-fashioned religion in the United States is gradually becoming detached from its erstwhile credal, if not spiritual, moorings and is assuming a rationalistic guise which will probably make it a quite harmless concoction of diluted ethical food for morally undernourished American youth. As the clergy of Canada have the reputation of being even more "modernized" than those of the United States, there appears to be every possibility that this rationalistic wave of enlightenment will soon spread north of the forty-ninth parallel, if it has not already done so, and oust the alleged hydra-headed monster of sectarianism from the public schools of the Dominion.

In an article entitled "The Exit of the Devil" (*Literary Digest* of May 4, 1929, page 26), a remarkable

"revulsion from orthodoxy" is noticeable in the replies of five hundred ministers and two hundred theological students who answered the items in a comprehensive questionnaire dealing with credal matters. Several of the more significant items from this questionnaire and replies thereto appear below:

"Do you believe:

(a) "That the New Testament is, and always will remain, the final revelation of the will of God to men?"

(b) "That Jesus was born of a virgin without a human father?"

(c) "That Jesus' death on the cross was the one act which made possible the remission of man's sins?"

(d) "In the resurrection of the body?"

(e) "That there is a continuance of life after death?"

(f) "That there will be one final day of judgment for all who have lived upon earth?"

In the replies below, the answers of the five hundred ministers appear in the first line and those of the two hundred theological students in the second line.

	Belief Per Cent.	Uncertainty Per Cent.	Disbelief Per Cent.
(a)	{ 66 18	10 13	24 69
(b)	{ 71 25	10 24	19 51
(c)	{ 70 29	6 10	24 61
(d)	{ 62 18	5 13	33 69
(e)	{ 97 89	2 7	1 4
(f)	{ 60 17	8 6	32 77

Probably the first reaction of the reader to these replies may be: Why do certain of these ministers not forsake the pulpit; or why are so many of these theological students, who have the temerity or hypocrisy to prepare for the ministry, permitted to remain in it? Yet the more pertinent question probably is: Might the minister or theological student not believe, or disbelieve, in any or all of these credal statements, without such belief or its opposite having any material influence on his life of service to his fellow men? It will be noted that there is an overwhelming belief in a "continuance of life after death." After all, preparation for this future state through a life of unselfish service to humanity may prove a more effective passport to eternal well-being than a mere profession of belief in orthodox credal statements.

It is not the purpose of the writer to pass judgment (other than a mere expression of surprise) on the orthodoxy or heterodoxy of these ministers and students as revealed in their answers to the questionnaire. All believed in the existence of God and hence escaped the stigma of atheism. Many of them were probably respectable agnostics while a smaller number might be considered sceptics. Moreover, sincere disbelief appears morally preferable to insincere expressions of belief.

From a psychological standpoint, however, the above study is of peculiar interest. What transfer, for instance, is there from the beliefs inculcated by early religious instruction in the home or school to the more mature beliefs of adult life? For the clergy should provide a fair sampling of those who received early instruction in at least the traditional fundamentals of religion as expressed in the items quoted from the questionnaire. Apparently this transfer

was far from perfect. Would the above transfer tend to be greater or less in the case of the laity than of the clergy? Would the latter, partly as a result of their more extended and intensive studies of dogmas and theologies, be more prone to experience a "revulsion from orthodoxy" than would the average member of the laity? Is there a tendency for religious instruction in the fundamental or orthodox evangelical articles of faith to deteriorate to sectarian instruction or indoctrination, which has failed to meet the acid test of modern social problems and hence is eventually discarded? Might early biblical instruction in the home or school, even if eventually forgotten or renounced, not have a valuable, if subconscious, transfer effect in influencing the more mature religious or moral life of its recipients? Does early religious education tend to stress the imparting of information to the relative neglect of the emotional appeal?

On reliable answers to such questions as the above, which in their very nature do not permit of replies in measurable or quantitative terms, must the chief values of early religious instruction in the home or school ultimately depend. Probably, however, one conclusion may provisionally be drawn from the above discussion: mere sectarian instruction or indoctrination during early life has little transfer value, apart from that common to the study of history or other subjects, to the more mature religious beliefs, if any, of adulthood. This tentative conclusion, however, should not be interpreted as derogatory to moral instruction in the home and school. Biblical knowledge can also be justified on cultural grounds. The agnostics and sceptics who answered the above questionnaire, as well as all thoughtful citizens, would doubtless advocate such an

education as would enable youth to appreciate the "true, the beautiful, and the good" in human affairs. Differences in the interpretation both of terms and content always have, and no doubt will continue, to arise. Moreover, such differences may have materially affected the above answers. For instance, probably no one has yet adequately defined "religious" education. It is also a truism to say that in biblical or religious, as in secular, education success depends largely on the personality and training of the instructor as well as on the methods and avenues of approach adopted. Professor Betts of Northwestern University, who conducted the above questionnaire study, concludes with the following recommendation:

It is time that the Christian forces should give practical proof of their desire for closer unity by having a commission of scholars formulate anew the minimum essentials of belief. With the sectarian tensions strong as they still are it may seem an idle dream to state it, but nevertheless the creed formulated should ignore all denominational interests, all claims of various schools of doctrine, all traditional lines of emphasis, and seek only to determine what religious beliefs represent the common elements growing out of universal human experience, proved knowledge and reasoned conclusion.

If such a common denominator of belief, however diluted, could be formulated, there would probably be little difficulty in obtaining its introduction, without serious protest, in the public schools of Canada. It is also probable that these "minimum essentials of belief" would be so diluted as to amount to little more than a collection of ethical statements to which all respectable citizens, including opportunist and timorous politicians, would readily yield assent. Traces of what might be termed "religion" would probably be found in this collection—as are now found in practically

all our public school readers—but all evidences of credal statements, in a sectarian sense, would obviously be lacking. From a Canadian point of view Professor Betts' use of the words, "idle dream," appears quite appropriate.

At this point the question naturally arises: Are the average or even the superior teachers in the public schools of Canada competent to impart biblical instruction satisfactorily? Should the bible be taught (not merely read) in the public school? No attempt is made here to answer the thorny question: Should religion be directly taught in the public school? Satisfactory definition of the terms involved in the latter question would be practically impossible. Moreover, any attempt at an adequate answer would inevitably lead far afield and probably involve a great deal of nebulous discussion. Even when the question is limited to biblical instruction in the public school, it is quite impossible to obtain unanimity among teachers or the laity. It appears justifiable, however, to assume in the following discussion that teachers themselves are the most competent to judge of their own ability or fitness to impart biblical instruction satisfactorily.

The data below were obtained from 198 teachers in attendance within recent years at several Summer Sessions of the University of British Columbia. The majority of these teachers were mature and experienced. About fifty per cent. of them were university graduates. The remainder were in the third or fourth year of the arts course. The median age of the group was slightly under thirty years. Practically all had highly successful records as teachers. It is obvious, therefore, that this group might reasonably be placed among the highest quartile or the most efficient

twenty-five per cent. of the teachers in British Columbia.

The question which these teachers answered was the following:

Should Biblical Instruction be Imparted by the Regular Teachers in Public Schools? (State Reasons in Support of Your Answer.)

The answers are tabulated below. No attempt was made to weight either the teachers' preferences or objections, which are arranged in numerical order.

1. *Opposed to Biblical Instruction by Teachers in the Public School:*

(a) Teachers are not qualified—through lack of training, lack of background, sectarian bias, personal prejudice or ignorance—to teach the bible; while, it was usually alleged, the clergy would interfere with the working of the school.—63 Replies.

(b) Such instruction would serve as the basis for local disputes and dissensions.—33 Replies.

(c) Source of sectarian propaganda.—9 Replies.

(d) The school would be usurping the functions of the home and church.—9 Replies.

(e) Biblical instruction is not necessary for the inculcation of moral principles.—9 Replies.

(f) The curriculum of the public school is too crowded now.—9 Replies.

(g) The majority of public school teachers object to biblical instruction which would probably deteriorate into a spiritless process. The tendency would be to commercialize or materialize religion.—9 Replies.

(h) Lack of justification as shown in the History of Education.—6 Replies.

(i) Bible teachings are contrary to scientific knowledge.—6 Replies.

Total Number of Teachers Opposed: 153.

2. *In Favour of Biblical Instruction by Teachers in Public Schools:*

(a) Cultural value of the bible as literature and history.—18 Replies.

(b) If kept unsectarian, biblical instruction would provide the basis for mutual religious understanding.—9 Replies.

(c) It is the duty of public education, even a national obligation, to supplement the best church and home influences.—6 Replies.

(d) Biblical instruction in the public school would prevent the bible from becoming extinct in the homes—a fate that threatens the bible now.—6 Replies.

(e) Religion should have a more educational basis.—3 Replies.

(f) Ethical value of the bible as an optional school text.—3 Replies.

Total Number of Teachers Favouring Biblical Instruction: 45.

These replies are illustrated in graphic form on the opposite page.

The above data are merely indicative of the present attitudes towards biblical instruction in the public school of a reasonably representative and mature group of British Columbia teachers. Those opposed to biblical instruction by the teacher were, in the main, also opposed to biblical instruction in the public school by the clergy. The chief ground for this objection was that clerical intervention, in addition to other probable abuses, would likely interfere with the ordinary "working of the public schools." The above replies, however, both for and against, should not be considered final. It is altogether probable that a second group of competent teachers, while perhaps opposed to biblical instruction in the public school,

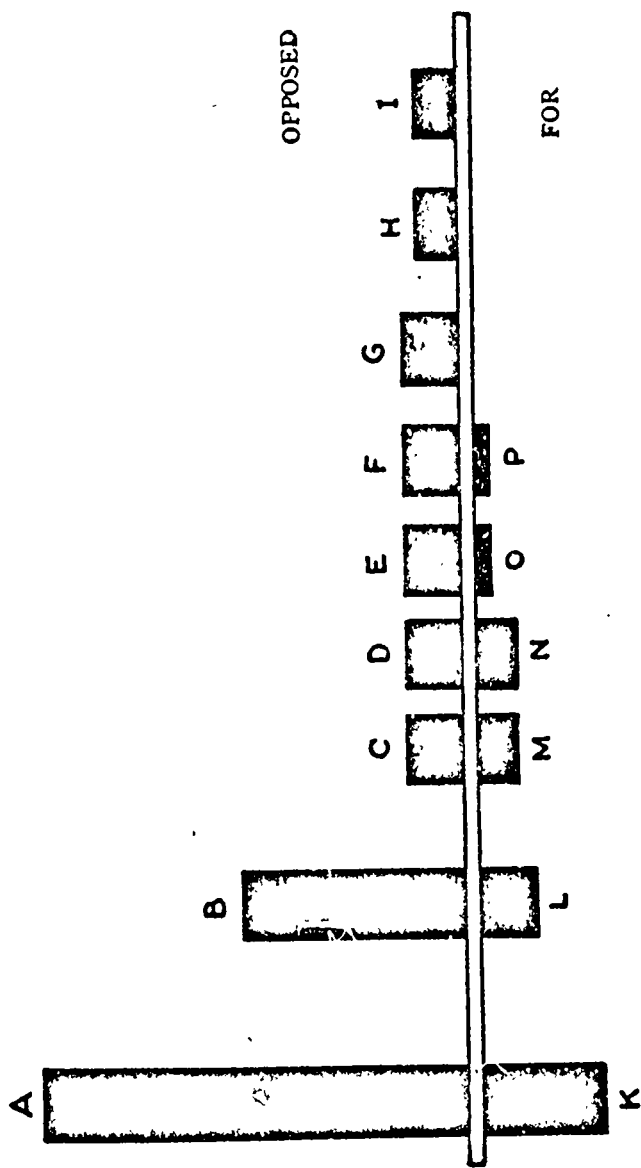


DIAGRAM ILLUSTRATING GROUPS OF BRITISH COLUMBIA TEACHERS OPPOSING AND FAVOURING BIBLICAL INSTRUCTION BY REGULAR TEACHERS IN THE PUBLIC SCHOOL.

The letters refer to the classes of reasons given above.

Cases — 198; 153 opposed and 45 for. One inch = 30 cases.

would not state their objections in the same numerical order as the above—with the possible exceptions of the reasons given by the groups designated A, B, and K.

Reference was made earlier in this chapter to the statement of a Harvard professor regarding the transmission of values. Such transmission, it was alleged, depended largely upon such values being "felt" rather than merely "known about." This statement of the case, however, is but a partial one. It is an accepted psychological principle that our emotions, cognitions and volitions are a unity. Vague feelings or volitions, detached from understanding, are ordinarily too evanescent to provide effective controls of conduct. Good intentions alone serve as paving stones for a well-known highway. While one may experience an urge to do right in general, such experiences are usually too vague to find expression in specific moral action. In a particular situation one must also know the right course of action in order to follow it to a rational conclusion. The ability to foresee consequences is involved in moral action. Understanding is an indispensable ingredient of the moral process. The prerequisites of rational moral conduct are the appreciation of purposes or objectives worthy to be achieved, the urge and challenge to achieve, and a knowledge of desirable modes of procedure in reaching worthy goals.

It cannot be too strongly emphasized that abstract religious or ethical teaching in the classroom or elsewhere, detached from practical life situations, may supply so-called urges or motivating forces in conduct; but these forces should find expression in the successful accomplishment of moral acts, accompanied by feelings of satisfaction, before effective controls of conduct are established in the learner.

In a word, the good life must be *lived* as well as "known about" or "felt." Classroom lessons on honesty or generosity or kindliness in the abstract, for instance, may supply the pupil with the feeling accompaniment of desirable moral action—the general urge to be honest or generous or kind; but unless he lives in situations that call out and successfully exercise these types of responses in the daily round of life he will scarcely develop into a truly moral citizen. Pupils should be trained to become moral self-starters, independent of supervisory controls; and in the process, while an appropriate idea in the inside of the head may be quite as effective as force on the outside or a series of ethical homilies, the learner must still "learn to do by doing." Apart from the experiences provided by suitable life situations, as previously stated, the learner cannot make the most satisfactory progress in moral growth. Moreover, it is in the latter respect, namely, the providing of situations representative of the all-round life outside of the classroom, that the ordinary school, as at present organized and conducted, is most deficient and needful of the active co-operation of the home, church and community life.

The fitness of the average school, in providing suitable experiences or situations requisite for all-round moral development, is well expressed in the following statement:

"It is in the attitudinal side of the life of children and youth," wrote Dr. Henry Suzzallo, "that we are most disappointed. And it is precisely in this feeling side of life that the school is least potent, for other forces and institutions, such as the home and the church and the neighbourhood life, are far more powerful. If these other educative forces do not do their part the school has a feeble foundation upon which to build, one it can scarcely repair. It is not constructed to do so. The relations of teacher and student

are not sufficiently intimate to provide the large influence in emotional reconstruction the school would need to have. Frequently the ideals, standards, and other working and living attitudes, which the school is able to set up by dint of great effort, are weakened if not frustrated by stronger emotional pressures from outside the school. One has only to call attention to the absence of fine personal manners, the continual use of slang for pure English, the substitution of pleasure motives for service motives which too often characterize our youth to know that some things the schools are trying to do are constantly being undone.

"Of course the schools need to be made more rigorous in their discipline now that society itself is so lax; but this lax attitude of adults does not permit the schoolmasters to be even so exacting as they used to be. Parents with personal grievances and other citizens with theories of reform more plausible than scientific have put so much pressure on the schools that pedagogical disciplines have to an extent given way. The public does not support as it should those firm standards which teachers as a whole would like to enforce.

"For these outside influences the schools are not responsible. Our faith in the power of the schools should not be weakened by them. The present educational situation does, however, call attention to the need to strengthen the other educative forces which surround school life and teaching."

The attitude of the Protestant public in the most secular Province in Canada, from the standpoint of biblical instruction or reading in the public school, may be of interest. Eight years ago the writer was a member of a Commission that made a survey of the school system of British Columbia, which, as previously stated, is the only Province that excludes the bible from the public school. Many citizens of British Columbia, while opposed to biblical instruction in the state-supported school, are quite ready to admit that religious faith and conviction constitute the supreme motive power and greatest incentive in

guiding the impulses and desires of youth along worthy lines. The question in British Columbia, however, as elsewhere in Canada, appears to resolve itself into one of sound public policy: What institution, or institutions, should be used as the means for the attainment of the above end?

The demands made upon the school in this connection were numerous and diverse. Many citizens in British Columbia would be satisfied with the reading of a few selected passages from the bible for ten or fifteen minutes a day, followed by the Lord's Prayer. The latter is permissible under the present school law. Attendance during the reading of such passages should, in their opinion, be optional on the part of the pupils. Others asked that high school credits be given for approved bible study to those selecting such an option. Yet others were of the opinion that biblical passages should be included in the high school courses in English classics.

Possibly the most comprehensive statement of opinion was presented before the Commission by representatives of the Federation of Parent-Teachers, whose recommendations in this connection are given below:

Be it *Resolved*, That this mass meeting of parents and teachers go on record as favouring and supporting the idea of including optional Bible reading and teaching in the regular educational programme for our children, and suggest as a means to this the adoption of any or all of the following plans:

1. That a list of biblical passages be selected by a committee representing the Department of Education and the churches; and that the School Act be so amended as to request these being read, followed by the repeating of the Lord's Prayer at the opening or closing of the school day; attendance at these exercises not to be compulsory.

2. That the School Act be so amended as to permit of one public school period per week being allotted for optional biblical instruction when such instruction could be arranged to be given by accredited Bible teachers, independent of the school teaching staff, and of the ordinary educational funds.

3. As the Bible is one of the greatest literary achievements of all time, and, of all books, has left the greatest impress upon our language, that the Bible, or parts of it, be included in the list of optional books in the high school course in literature, the teaching to be given independent of public educational funds, by trained Bible teachers, whose qualifications shall be approved by the Department of Education.

The above programme, it will be observed, does not suggest that biblical instruction be given by the regular teachers or paid for out of state funds.

Ninety-seven affiliated associations constituted the Provincial Federation in 1925. The result of the voting in the case of the fifty-nine associations that reported on the above three resolutions was as follows:

Resolution	For	Against	Blank	Total
1.....	49	6	4	59
2.....	26	15	18	59
3.....	30	10	19	59

It should be noted that only fifty-nine of the ninety-seven local associations voted on the resolutions, or sixty per cent. of the total. Also it is manifest that there was far from unanimity of opinion among the local associations that did vote.

On the other hand, a large number of citizens voiced their most emphatic protest against the introduction of biblical readings, under any conditions, in state-supported schools. Such, it was alleged, would mean the "thin edge of the wedge." Some

asserted that this course would mean a "hell on earth," so far, presumably, as British Columbia constituted a section of the "earth."

It is apparent, therefore, that a widespread programme of adult education is advisable before legislation is resorted to in the matter of biblical instruction in the public schools of British Columbia. Where convictions or emotions are concerned, premature legislation may easily do more harm than good. Until such a programme of adult education has been successfully conducted throughout Canada, and not only in British Columbia, the wisdom of extending biblical instruction in the public schools of the various Provinces appears extremely doubtful. Under present conditions Canada has probably now gone the limit in the field of biblical instruction in state-supported schools. The writer is not recommending that a campaign of adult education should be conducted with the above object in view, but merely points out the advisability of such a precautionary measure before any material extension of the provincial school ordinances regarding biblical teaching might be attempted.

CHAPTER XIV

INCIDENTAL PROBLEMS

THE existence of separate schools in Ontario, Saskatchewan and Alberta is frequently assumed by certain trustee boards and citizens of these Provinces to constitute an almost impassable barrier to educational progress or reform. In this connection the problems, real or imaginary, arising out of the separate school situation are largely of an administrative nature and pertain to three main types of organization: the Junior High School; the Single Board of School Trustees for elementary and secondary schools; and the establishment of a Bureau of Educational Research for Canada. The influence of the Roman Catholic Church in the above Provinces, and in Quebec, it is frequently alleged, tends to nullify the efforts of the more progressive Protestant taxpayers who attempt to modernize public education through the introduction of the above or similar "innovations."

With the exception of the larger cities in Saskatchewan, it may be said that the Single Board of School Trustees can scarcely be considered an innovation in Canada. The Junior High School, however, in reality rather than merely in name, is practically limited to British Columbia; while the creation of a Bureau of Educational Research—which is something quite different from the Federal Bureau of Statistics—seems little nearer to realization than it was when the matter was first given serious consideration nearly fifteen years ago.

The question arises at this point as to whether or not any denominational group can legally prevent the

establishment of public junior high schools or other types of educational organization by virtue of the guarantees affecting minority rights or privileges under Section 93 of the B.N.A. Act. The answer to this question, in part at least, will emerge in the course of the following discussion.

A brief digression might be made here to consider some of the more generally recognized advantages of the junior high school. Are these advantages such as to warrant the assumption that the school system of Saskatchewan or Ontario,¹ for instance, is appreciably weakened through being deprived of junior high schools? The reader is probably aware that the secondary school period both in Great Britain and on the Continent usually begins about two years earlier than is customary in Canada. At eleven or twelve years of age the English or French pupil ordinarily enters secondary school and continues his course for six or seven years. In Canada the average age for high school entrance is thirteen or fourteen, while the usual high school course extends over a period of only three or four years. Needless to state, students of education have little doubt regarding the superiority in the above respect of the British system. Fortunately, the traditional school organization in the majority of Provinces can be made to approximate the British secondary school system through the establishment in these Provinces of the junior high school, which includes Grades VII, VIII and IX and usually results in the introduction of certain high school subjects, especially foreign languages, two years earlier than at present. In other words, where junior high school organization is operative, the

¹ See: *Chief Inspector's Annual Report—Ottawa Public Schools*, 1932, p. 13 et seq.

pupil spends six years in the elementary school, three years in the junior high school, and three years in the senior high school grades instead of, as is frequently the case at present, eight years in the elementary school and four years in the high school. The total time, therefore, spent in the elementary and secondary school is not increased through the adoption of the junior high school system.

From an educational standpoint the junior high school is generally admitted to be superior to the traditional school organization in the following, among other, respects. Seven or eight years in the elementary school and only four years in the high school are relatively too long a period for mastering the tools of knowledge—the so-called 3 R's—with a smattering of the content studies, and too brief for acquiring the richer content of the high school courses. Furthermore, the transition from Grade VIII to IX under the traditional system is often too abrupt, with the result that the beginning high school pupil is bewildered with the multiplicity of new subjects and new methods. Consequently the pupil mortality at the end of Grade IX sometimes reaches as high as forty per cent. of the first year enrolment of the traditional high school. On the other hand, the holding power of the so-called 6-3-3 plan (six years in the elementary school, three years in the junior high school, and three years in the senior high school) is frequently increased by forty to fifty per cent. in certain subjects owing to the reduction in pupil retardation and failures.

The above results are not merely accidental. The 6-3-3 system is more in accord with the psychology of early adolescence. It is more readily adapted to the emotional and physiological as well as to the intellectual development of the adolescent pupil and,

through its emphasis on vocational and educational guidance and the psychology of individual differences, more effectively subordinates the curriculum and methods of instruction to the needs of the pupil who, rather than the subject or formal examination, is placed upon the educational pedestal. Adaptation of the junior high school curriculum to individual needs is procured, in part, through the division of the courses into two groups, one consisting of the more fundamental subjects, generally known as "constants," which all students take; the other as "variables," such as household science, manual training, music and art, which are selected by students according to their individual needs, tastes and capacities.

The junior high school, like the senior high school, is also departmentalized, i.e. a specialist is in charge of each department, but, unlike the practice in the average senior institution in the majority of Provinces, promotion takes place by subjects rather than by years or grades, so that a pupil who happens to have failed in a subject or two is spared the needless monotony of repeating courses already passed. Furthermore, while the so-called 6-3-3 organization stresses the vocational subjects, such as manual arts and household science, it is quite as cultural as is the traditional high school, which directs the great majority of its students towards the university or normal school irrespective of the life needs of these students or of their capacity to benefit from an education largely of an academic type. Contrary to the rather common belief in this respect, the adequately organized junior high school is not a trade or vocational institution in the narrow sense, nor is it, in the light of educational dividends obtained, more expensive on a *per capita* basis than is the traditional school

organization whose lineage is probably more Prussian than British.

It is, of course, admitted that the above educational features are not peculiar to the junior high school. Many of them are also found in the well-equipped secondary school. The fact appears to be, however, that the outstanding phases of modern educational progress are more readily procurable through the former than the latter type of institution. Moreover, experience has shown that, in school systems with approximately five hundred pupils in Grades VII to XII (Senior matriculation or first class certificate) inclusive, a combined junior and senior high school system, as a single organization, may be adopted to the best advantage. Rural, village and small town communities, where school consolidation is not in effect, obviously do not come within the above category. On grounds of economy and classroom organization the adolescent school population of such communities is ordinarily too small to warrant the adoption of junior high schools.

The above digression, which states rather than proves the case, merely indicates in somewhat arbitrary fashion the allegedly superior advantages of the junior high school system. If these advantages are real rather than only apparent—and students of education have little reason to doubt their validity especially in city school systems—it is obvious that the denominational school is guilty of serious prejudice to the cause of public education if, as frequently is alleged, the influence of the sectarian institution is inimical to the junior high school movement particularly in urban centres.

The chief difficulties in the way of establishing junior high schools in Saskatchewan were concisely

stated to the writer by a leading Orangeman who was also a high school trustee in that Province. The existence of separate schools, it was asserted, sets up an almost impassable barrier to any type of intermediate school including Grades VII, VIII and IX. In the first place it was maintained that separate school supporters would be unwilling to relinquish Grades VII and VIII from their present schools for the purpose of merging these grades in the new organization. The result, therefore, would probably be that, in order to placate the Roman Catholic minority, separate junior high schools for Roman Catholics would have to be created. Here the dilemma arose. Such an extension of separate schools would doubtless be strenuously opposed by a large section of the Protestant population, who would be unwilling to relinquish control over Roman Catholic pupils in Grade IX of the present high school system in order to clear the way for the establishment of even a small number of separate junior high schools. At first glance, therefore, the case for the establishment of junior high schools in Saskatchewan would appear almost hopeless.

The separate school situation in Saskatchewan, however, may not set up such formidable obstacles to the establishment of junior high schools, in urban centres at least, as the above statement of the case might suggest. In the first place, there are only twenty-nine separate schools in Saskatchewan, with a total enrolment, as at June 30, 1932, of 5,001 pupils. Moreover, five of the separate schools in Saskatchewan are Protestant. The number of separate schools in Ontario may present a more difficult problem. In 1931 nearly 110,000 pupils were enrolled in 761 separate schools in Ontario as compared with 617,681 pupils found in 6,831 elementary, continuation and

high schools. In Saskatchewan, in other words, only one pupil in forty-five is enrolled in a separate school as against one pupil in six attending school in Ontario.

In the light of the judgment in the Tiny Township Case (See Chapter Ten) the competence of the Ontario or other provincial Legislature to establish junior high schools, including Grades VII, VIII and IX, whether of public or separate schools, seems hardly open to serious doubt. "But they (the Roman Catholics of Ontario) are still left with separate schools," reads the judgment of Viscount Haldane in the above case, "which are none the less actual because the liberty of giving secondary and higher education in them may be abridged by regulation. Such an abridgment may be in the usual course when a national system of education has attained a certain stage in its development, and it would be difficult to forego this power if the *grading which may be essential is also to be possible.*" The question, therefore, appears to resolve itself into one of public policy, which probably would be averse to any measure of coercion.

It can scarcely be denied that the existence of state-aided separate schools in the above Provinces does hinder, to some extent, the establishment therein of junior high schools. At the same time the writer has been assured by a number of leading Roman Catholics in Saskatchewan and Ontario that they resent the references usually made to separate schools whenever matters concerning educational progress are under discussion. The "smoke screen" of separate school conservatism, it is stated, is too often thrown up by certain educational officials and politicians as an attempted justification for their inertia or timidity in attacking school problems involving matters of radical reorganization. In any event, it is probable that

most separate school supporters in Canada have no serious objection to the establishment of junior high schools by the majority, and it appears quite natural that intelligent Roman Catholics should resent the prejudicial position in which their separate schools are placed by being represented as obstacles to educational progress. In Saskatchewan, for instance, about twenty per cent. of the population are Roman Catholics, while, as already stated, only one out of forty-five pupils in all government-aided schools attends the separate school. It hardly seems reasonable to assume that in an enlightened Province, such as Saskatchewan, the majority of ratepayers are to be prevented from introducing modern educational improvements in their public school system owing to the possible, and perhaps largely imaginary, objections of the religious minority.

Present financial conditions in Saskatchewan and other Provinces are undoubtedly a very real deterrent to any far-reaching educational reorganization. Such conditions, however, appear to be only temporary. When ratepayers realize that the junior high school, especially in the cities, is a good social investment, returning handsome educational dividends in comparison with those from the pre-war Prussian type of school organization on which many Canadian schools are patterned, it seems probable that these citizens will reject both the financial and separate school arguments now advanced by timid administrative officials and politicians against the introduction even of a modified form of the junior high school system.

It is difficult to find any legal or other valid objection to legislation enabling public school supporters of Regina or Saskatoon or Toronto, for instance, to establish junior high schools without

reference to the separate schools of these cities unless the latter schools asked to be included. The majority of ratepayers in the above instances could, if legally authorized, organize junior high schools without in any degree coercing the religious minority or taking away Grades VII and VIII from the separate schools. The latter schools, if the minority objected to the junior high school system, could continue as at present, i.e. include the Grades from I to VIII. In the latter event, the separate schools, if they so desired, might be modified so as to include certain junior high school features in Grades VII and VIII, and thus their pupils could pass directly and without very great handicap from Grade VIII of the separate school to Grade IX of the junior high school. Under present conditions these pupils directly enter Grade IX (or its equivalent) of the traditional high school. The presence of junior high school features in Grade IX should not prove objectionable to any intelligent citizen whether Protestant or Roman Catholic.

Furthermore, the provincial authorities concerned are under no more legal obligation to grant junior high schools than senior high schools to the religious minority. If minority junior high schools were demanded, however, why not grant them on condition that they were not to include Grade IX of the present high school system? While this arrangement would be far from ideal, it would probably represent a step forward. The introduction of real junior high school features, if only in Grades VII and VIII, should effect some improvement in the traditional curriculum which in many schools might be revised to good advantage.

By way of summary it may be said that, as most students of education are aware, the junior high

school system, modified to suit local needs, has amply established its worth during the last thirty years. It has passed the experimental stage and is no longer regarded as a leap in the dark but rather as a comparatively permanent feature, under different names and in different forms, of efficient school organization. Its prototype is more British than Prussian. It would appear that in no Province is there either legal or moral impediment in the way of adopting junior high schools. The problems involved here are largely academic and administrative rather than denominational or legal. Moreover, if these problems were approached from a conciliatory and unbiased point of view, it seems probable that the majority of objections usually urged in Ontario and the Prairie Provinces against the adoption of the junior high school would reveal their futility in much the same manner as similar objections to the introduction of technical education in certain sections of Canada proved groundless nearly thirty years ago.

We may now turn to a consideration of the Single Board of School Trustees. An opinion, as mistaken as it is sincere, to the effect that the existence of separate schools in Saskatchewan constitutes a formidable barrier to the establishment of a single board of school trustees for public and high schools, is held by a considerable number of Orangemen and others in that Province. "How can the single board be made effective in Saskatchewan," writes a leading Orangeman, "without an enlargement of the present system of separate schools? . . . It would appear to me that with a (single) board of education, the separate school supporter, who now has a right to sit on the high school board, either would be deprived of that right, or else by virtue of his religion he would

have a seat on the board of education, or that the Roman Catholics would have separate high schools."

Here the separate school bogey again appears in its usual pseudo-formidable setting. Fortunately, however, the above difficulties are more imaginary than real. Leading schoolmen and trustees in Saskatchewan are in practical agreement regarding the advantages to be derived from the single board. Some of these advantages are economy of time in transacting school business, more effective co-ordination of the work of elementary and secondary schools, avoidance of wasteful duplication of effort, general efficiency in educational administration, and the realization of higher educational values for the community at large. For it is the well-established experience of the majority of the Provinces as well as of the British Isles, New Zealand, Australia, the United States and many European countries that, the fewer the artificial divisions existing in the control of schools are, the better are the educational values realized.

In Ontario, where separate schools are a more comprehensive feature of the educational system than they are in Saskatchewan, a partial solution at least has been found for the single school board problem. If the relevant sections of the Ontario school act (quoted below) were made mandatory, rather than permissive as at present, and if the size of the union board were made less unwieldy through reduction of its membership by perhaps one-third, the above act might prove more satisfactory. In the judgment of the writer, no board of school trustees in Canada need have more than nine members. Perhaps seven would be sufficient. Large school boards are as notoriously inefficient as large provincial cabinets.

The fact that the former serve without financial remuneration is a tribute to their public spirit rather than a proof of their efficiency in school administration. If a competent superintendent of city schools is vested with adequate authority and given sufficient administrative and clerical assistance, he should then be held to strict accountability by a board whose chief function, as representatives of the ratepayers, is, after due consultation, to approve or reject rather than to formulate educational policies. The latter function falls within the sphere of expert educational leadership for which the great majority of trustees are almost entirely untrained. Moreover, a large board of trustees is ordinarily quite prone to split up into an unnecessary number of committees that take upon themselves the solution of problems with which they are not qualified to deal.

The more pertinent sections of the Ontario Boards of Education Act (R.S.O. 1927, Chapter 327) read as follows:

2. (1) When a high school district does not extend beyond the limits of the municipality the council of a city, town or village in which one or more high schools are situate may, on or before the 1st day of October in any year, at a meeting specially called for the purpose, declare by resolution that it is expedient to form a municipal board of education under this Act.

(2) Such resolution may be passed notwithstanding that a union board of education already exists in the municipality.

(3) The council shall, at the next succeeding municipal election, submit to a vote of the electors the question: "Are you in favour of the formation of a Municipal Board of Education," and in case the question is answered in the affirmative by a majority of the electors voting thereon, the elective members of the board shall be elected at the next ensuing municipal election, and the members to be appointed

shall thereupon be appointed and the Board organized in accordance with the provisions of this Act.

(4) Upon the organization of the board all the property theretofore vested in the high school board and the public school board shall become vested in the municipal board, and all the debts, contracts and agreements for which the previous boards were liable shall become obligations of the municipal board.

(11) The appointment of a member or members by the separate school board shall be made at the first meeting thereof in the year in which the first election of the municipal board is held and at its first meeting in every second year thereafter.

22. A member of a board who is a separate school supporter, or who is appointed by the county council, shall not vote or otherwise take part in any of the proceedings of the board exclusively affecting the public schools.

That the practical operation of the above clauses has been reasonably successful is shown by the following statement of the Business Administrator and Secretary-Treasurer of the Toronto Board of Education:

There is a union Board of Education in Toronto over all Public, High, Commercial and Technical Schools of the city, with the following academic officials to assist them, viz. a Chief Inspector of Public Schools, a Supervising Principal of High Schools and a Director of Technical Education. The proceedings of the Board are divided into two parts, Part I dealing with High Schools exclusively, and Part II dealing with Public Schools. At the conclusion of Part I the representatives of the Separate School Board withdraw. In Toronto the representatives of the latter Board refused to act when the question of the right of Roman Catholics to have separate High Schools was taken before the courts.

Before the union Board of Education was established there were two boards, a Public School and a High School. The members of the Public School Board were elected and those of the High School appointed. This resulted in lack

of co-ordination and sympathy between the two systems. The High School Board was always charged with extravagance and met with difficulty every year in getting its estimates approved. The joint board has proved very satisfactory, and the members are interested equally in every branch of education.

So far as the writer has been able to ascertain, no single board of education in Canada has expressed a desire to return to the dual system.

Many statements of similar effect to that from Toronto might be quoted at length. These were received from cities in Ontario and other Provinces. Sufficient evidence has probably been given, however, to show the lack of any real foundation for the objections against the single board advanced by certain Orangemen and others in Saskatchewan. As a matter of fact, a number of high school districts in Saskatchewan have found it possible to escape some of the more undesirable features of the dual board system by electing the same personnel as public and high school trustees. Other high schools in Saskatchewan have chosen to conduct their secondary school work under the School Act, whereby one board of trustees for elementary and secondary schools is adequate, rather than under the Secondary Education Act of 1907. This jumbled school legislation has brought into existence two types of high school in Saskatchewan. Between these types many anomalies exist which no educationist of any standing would attempt to justify. Nor can Orangemen or others successfully lay the real blame for such anomalies at the door of Saskatchewan's separate schools. To short-sighted secondary school legislation, adopted over a quarter of a century ago, before the young Province had found its educational stride, the real blame is attribu-

table. Indeed, it scarcely seems credible that the Anderson Government, which has displayed unusual zeal in matters of educational reform, will long hesitate to legalize the single board of trustees for elementary and secondary schools. A resolute educational administration will take this step irrespective of the ephemeral objections offered by certain mistaken, though doubtless well-intentioned, citizens of Saskatchewan.

When we turn to the consideration of a subject of a more illusory nature than the junior high school or single board of school trustees—a subject, moreover, that cannot be considered apart from the spirit of sectarianism in Canada—it should be stated that about fifteen years ago high hopes were entertained by educationists and others throughout Canada that a Bureau of Education, acting in an advisory capacity and financed in part by the federal government, would be created. The chief function of this Bureau would have been, not merely to collect and tabulate educational data, but to project and conduct, under its own guidance, studies in education of common interest to all the Provinces. There is a real need, for instance, for the ascertaining of Canadian norms in the field of standardized tests; to collect, evaluate and organize the results of various studies made along experimental lines in education; to institute a depository of educational information that should be made available to students of education or to other interested citizens. To some extent the activities of the Board of Education in England or of the Bureau of Education in Washington indicate the type of work that might be undertaken, on a smaller scale perhaps, by a similar Bureau in Canada. Owing to sectarian and other divisive influences existing in the most populous sections of the

Dominion, however, it is probable that this Bureau, if it ever becomes a reality, will be established by private foundation.

The recently created Federal Bureau of Statistics has accomplished excellent results and more than justified its existence. But it is not a Bureau of Educational Research in the above sense of the term.

In the expectation that such a Bureau would eventually be established if a preliminary campaign of education were conducted to get the project under way, the Rotary Clubs of Canada and certain public-spirited citizens contributed a considerable sum of money for this purpose. Their hopes, however, were soon dashed to the ground. Rumours that federal aid would have been forthcoming had it not been for the opposition of certain sectarian interests, especially in Quebec, were the only explanation given for the collapse of the movement. Obviously the spending of federal money for such a purpose would have been of doubtful discretion unless all provincial governments had been in practical agreement regarding the aims and functions of the new organization. But the spirit of separatism and provincialism in education which, it was hoped, the proposed Bureau would in some measure eventually overcome, again proved a stumbling-block in the pathway of educational progress. Moreover, this spirit was probably not brought into being by separate schools, though it may have been intensified by their growth. On the other hand, the sectarian outlook and attitude that caused Section 93, as embodying the indispensable condition of Confederation, to be included in the B.N.A. Act still operated as a divisive force even in a field that would have been solely of an academic and scientific, rather than denominational, nature. Such

an attitude of the separatists, whether Roman Catholic or Protestant, if persisted in, might well arouse opposition on the part of unprejudiced citizens towards denominational school influences and result in the ultimate weakening of the minority school cause, which certain sectarian zealots have a tendency to advance with an unreasoning and bigoted tenacity.

While, in the writer's judgment, the separate or dissentient school laws of the Prairie Provinces, Ontario and Quebec are, like every product of human ingenuity, not above criticism, he has no reason nor desire to impugn the good intentions of the different Legislatures in passing them. If the great problems of nation-building are to be satisfactorily solved in Canada, there can be no place for racial animosities, religious prejudice, coercive attempts to secure educational uniformity, nor yet for bitter controversy. Not until the leaders in thought and public life in Canada are actuated by a spirit of tolerance and good will towards all classes and creeds can there be any real promise of the "far flung provinces" of the Dominion rising to the level of their potential greatness.

APPENDIX I

Re N.W.T. Ordinance of 1892.

In Hansard, April 26, 1894, p. 2042, the Government's reasons for not disallowing the N.W.T. Ordinance of 1892 are set forth in a speech by Sir John Thompson.

Various petitions had been received by the Government, praying that the Ordinance be disallowed on the ground that actual grievances existed as a result of this legislation. Apprehension was likewise expressed in regard to the inviolability of minority school rights in the future. Especially was objection taken to the compulsory professional training of teachers and to the prescribed texts¹ to be used in separate schools. On investigation by the Dominion Government it was found that a positive disagreement as to the facts of the case existed, and, in the face of such contradictory evidence as was offered, disallowance was deemed inexpedient.

The Federal Government requested the Legislature of the Territories to re-examine the whole subject with a view to inquiring both into the complaints that grievances actually existed and into the allied complaints that grievances might arise owing to the absence of security as to the nature of subsequent legislation.

The question of disallowance is clearly set forth by Sir John Thompson: "disallowance takes from the moment of its being proclaimed . . . to the Legislature, and, therefore, it follows that what has been done under the disallowed act in the meantime remains in full force and vigour. If . . . the ordinance disallowed has been void as being *ultra vires*, of course everything is null and void from the beginning. . . . It is said that while disallowance could not have nullified the regulations

¹ The ordinance of 1892 caused no immediate change in the prescribed texts. A circular issued by the secretary of the council of public instruction, September 30th, 1893, contained the following: "In school districts, where French is the vernacular, the school trustees may, upon obtaining the consent of an inspector in writing, use the Ontario series of bilingual readers, part I, II, and the second reader, instead of the Dominion series or the Ontario readers. In all standards above the second the Ontario readers are prescribed after 1st of January, 1894."

which existed before, it would have restored to the Separate Schools control by the Catholic section of the Board of Education and that the Catholics would, therefore, have been able to get redress against any regulations which were objectionable."

Sir John Thompson also pointed out that the jurisdiction of the Dominion Government for redressing grievances in the Territories was not the same as obtained with respect to the Provinces, that is, limited to one year. The Federal Government could, on the other hand, from day to day or from year to year remove any substantial hardships imposed by the Territorial Legislature. Hence there was no need for immediate disallowance, more particularly as the evidence was so conflicting.

Furthermore, the case was not on a par with the issues of the Manitoba School Question, and hence, it was alleged, should not be submitted to the courts. The question was simply one of fact, not of law, i.e., were Separate Schools actually swept away by the Ordinance of 1892? On this phase of the question the leader of the opposition (Mr. Laurier) expressed agreement with the Government.

The following extract is typical of the opinion expressed by the opponents of the Ordinance in question, who maintained that it was the duty of the Government to resort to disallowance. Mr. Tarte (quoting the Hon. T. C. Casgrain) used the following words:

"No one had the right to deprive the Catholics of the North-West Territories of their Separate Schools. The Hon. Mr. Haultain . . . understood that pretty well. That is why he went in a roundabout way. He overhauled all the Ordinances relating to schools; and while the New Ordinance reaffirms the rights of Catholics to Separate Schools, it makes these dependent on such conditions that they are virtually suppressed. So that Mr. Haultain has done indirectly what he could not do directly."

Re Alberta and Saskatchewan Acts—1905. Extracts from Hansard Debates.

Mr. W. Scott—March 31, 1905, Hansard, p. 3614.

"I want to say, speaking as a Protestant, not as a member of the minority, that in view of the history of this

matter I would be ashamed of myself as a Protestant and ashamed of the Protestant majority, if we would wish now, merely because we have the power, to deny the very thing which we as Protestants stood out for when a Protestant minority was affected." It was rather expected by the Federal Parliament of 1875, according to Mr. Scott, that the minority in the North-West Territories would be Protestant.

Sir Wilfrid Laurier.—March 15, 1905, Hansard, p. 2506.

"Mr. Haultain took the ground that Section 93 of the British North America Act applied mechanically to those provinces. The ground we (the cabinet) took was that Section 93 of the British North America Act did not apply mechanically, but that it should be made to apply in the legislation we offered to the House, subject only to such modifications as the circumstances of the new provinces would warrant."

Hon. R. L. Borden.—March 22, 1905, Hansard, p. 2975.

"The very basis of confederation, contemplating the inclusion of all British North America, provided for Separate Schools in Ontario and Quebec only. But no restrictions on provincial powers were contemplated in the North-west. None were mentioned in the Quebec resolutions. . . . Why then should they (the people of the Territories) not receive the same rights which were conferred upon the people of Nova Scotia, New Brunswick, and Prince Edward Island, and which are now enjoyed by them?"

On June 28, 1905, Mr. Borden spoke as follows (Hansard, p. 8292): "I believe that the application of Section 93 of the British North America Act will leave the new Provinces the right to deal with the question of education. I have said already that this is a question about which honourable gentlemen in this House have differed and that I do not claim to be infallible." Mr. Borden moved in amendment (July 5, 1905, Hansard, p. 8804) that part of section 16 of the bill before the House be struck out and the following inserted: "that the provisions of Section 93 of the British North America Act, 1867, shall apply to the said Province in so far as the same are applicable under the terms thereof."

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Re Applicability of Section 93 of the B.N.A. Act to the new Provinces. July 5, 1905, Ilansard, p. 8810.

Mr. Fitzpatrick, speaking in the House on the subject of education, as governed by the Saskatchewan Act, and the Federal jurisdiction to insert Section 17 in the Act, made the following statements: "My honourable friend (Mr. Borden) says, however, that these Territories are not Provinces and consequently this section (Section 93, B.N.A. Act) does not in terms apply to the new Provinces. Conceivably that is true. There is a doubt in my mind as to whether or not these Territories, not being provinces, come within the wording of Section 93; and in the technical meaning of the term, the minority might not have those rights and privileges which they enjoy under the School Ordinance. That is the letter of the law, but what is the spirit?"

Mr. Borden interrupted as follows: "If we had power under the Act of 1871, to absolutely disregard Section 93 of the British North America Act, then of course there is no further question. We cannot make a new Section 93. If, on the other hand, we are bound to observe Section 93, it does not seem to me that we can increase our power by passing any act restricting the powers of a Territorial Legislature, and then, the following year, when creating a Province, say: "there you have restrictions operating upon the Territorial Legislature and the Provincial Legislature must be governed thereby."

Mr. Fitzpatrick replied: "Proceeding on the assumption that we are dealing with these Territories, under the Act of 1871, as Manitoba was dealt with and British Columbia and Prince Edward Island and every Province brought into the Dominion since Confederation, we are applying to these new Provinces the same principle we applied to those Provinces. If these Territories were coming in as Provinces, created previous to this time, there would be no question as to the application of Section 93, and all the rights and privileges guaranteed the minority under existing legislation would be continued; but because they do not come within the word 'province' my honourable friend says: your door is barred and Section 93 of the British North America Act does not apply. My answer is that when these Territories were brought into Confederation, they

were brought in under a compact entered into between the people of Canada and the Imperial authorities. We find in the petition to the Imperial authorities the following language:

"That the welfare of the sparse and scattered population of British subjects of European origin, who inhabit these remote and unorganized territories, would be materially enhanced by the formation therein of political institutions bearing analogy, as far as the circumstances will admit, to those that exist in the several Provinces of the Dominion."

This petition was granted and, in the words of the Imperial order-in-council, as quoted by Mr. Fitzpatrick, ". . . from and after the 15th day of July, 1870, the said North-West Territories shall be admitted into and become part of the Dominion of Canada upon the terms and conditions set forth in the first hereinbefore recited address."

APPENDIX II

(The writer is indebted to ex-Premier Scott for this Report.)

Report of proceedings when delegation from Grand Orange Lodge of Saskatchewan waited upon Government, 11 a.m., Thursday, January 20, 1916.

PRESENT

Hon. W. Scott Premier.
Hon. J. A. Calder Minister of Railways and Highways.
Hon. A. P. McNab Minister of Public Works.
Mr. Isaac Dawson Deputy Grand Master.
Mr. W. H. G. Armstrong Grand Organizer for Saskatchewan.
Mr. M. L. G. Armstrong Grand Master of Saskatchewan.
Mr. Robert Dawson Worshipful Master.

Mr. Armstrong, Sr. (Spokesman): If you are ready to hear us, Mr. Scott, we will proceed with what we have to say and inform you as to why we are here and what we desire.

Hon. W. Scott: Yes.

Mr. Armstrong: We, as you already know, represent the Orange Association of Saskatchewan. We are an institution composed of both political parties. We are not a partisan institution by any means, although some people think we are; we do not seek to rob any class of citizens of their constitutional rights or their right to worship God according to the dictates of their conscience. These were never the objects of our association and never will be. We exist as a matter of fact, to protect all loyal subjects in the enjoyment of their constitutional rights, whether they are Roman Catholics or Protestants.

We are deeply interested in the question of education, believing, as we do, that one national school system is the ideal system for this new country. We have always advocated that principle and, therefore, we think that this is an opportune time, when the question of education, we understand, is to be gone into by the government. We

think the time is now opportune to present our views and impress upon the Government as earnestly as possible, the measures which we think are in the interests of this new Province, and necessary to settle this question once and for all.

Now, we believe that Separate Schools are not in the best interests of this country. We say furthermore that the people of Saskatchewan have never had the privilege or right to say what system of schools they preferred or desire. The North-West Territories were purchased from the Hudson's Bay Company, and became part of Canada in the year 1870. No schools at that time existed in the Territories, but in the year 1875, when we had five hundred white people living in the Territories, the Federal Parliament passed an Act granting to the people of the North-West Territories limited legislative powers. According to that statute, passed by a Parliament in which we had no representation, we had to have a dual system of schools. I mention this to show that Separate Schools were not established by the sovereign will of the people of the North-West Territories. It was contended by recognized constitutional lawyers in Parliament that when autonomy was granted to the Territories, the people would be given the right to decide for themselves as to what system of education they would have. The late Dalton McCarthy in 1894, in the Federal Parliament introduced a resolution, conferring upon the Assembly of the North-West Territories the power to establish whatever system of schools they deemed in the best interests of the Territories, and also to abolish the dual language. Hon. David Mills—I am not certain whether or not he was at a later date a Judge of the Supreme Court of Canada—(interruption—he was)—at all events recognized as a great constitutional lawyer, took the stand that when autonomy was granted to the North-West Territories when new Provinces were erected, the people should be given the right, under the constitution, to establish whatever system of schools they preferred. Sir John Thompson, then Chief Justice of Canada, took the same stand. Hon. Sir L. Davies, who is now a Judge of the Supreme Court of Canada, took similar ground. But in 1905 legislation was enacted, establishing two new Provinces in the Territories, and because a system of Separate Schools

existed in the Territories, established by virtue of a Federal Statute passed by a Parliament in which we had no representation, that system was made perpetual.

Sub-section 1 of Section 93 of the British North America Act provides that, "In and for each province the legislature may exclusively make laws in relation to education, subject and according to the following provisions:

"1. Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law in the Province at the union."

The Government interpreted this to mean that the system of schools which then existed in the Territories had to be perpetuated. Now I grant, and we all grant that if the Province had been a sovereign-entity and if Separate Schools had been established by the sovereign will of the people inhabiting the Territories, as the British North America Act is meant to apply automatically to new Provinces coming into the Union as well as those originally forming Confederation in 1867, I am free to admit that Separate Schools would be fastened upon the Province for all time to come, but we were not a sovereign-entity at the time we came into the Union, and never had the right to decide for ourselves what our education should be. The Territories were given a limited power only by the Federal Parliament, and we had not the right to establish one National system of education, but had to abide by conditions imposed in 1875 by the Federal Parliament. So long as we were in a territorial position, we were willing to submit to these conditions, but as soon as we were created a Province, we should have been given the same rights as other Provinces to decide for ourselves what system of education we should have. It never was intended, in our opinion, by the framers of the British North America Act or by the Fathers of Confederation, or by the Imperial Parliament which passed the British North America Act, that because a system of education was established in the Territories by a delegated authority from the Parliament of Canada, in which the five hundred inhabitants of the Territories had no voice, that that system should be forced upon us for ever, and that our rights as a province should be shackled and our Provincial Constitution be circumscribed as it was by the

autonomy legislation of 1905. Clause 93 of the British North America Act referred to two of the Provinces that came into the Federation in 1867, namely Ontario and Quebec, because they were the only provinces that had separate or minority schools.

Separate Schools in these Provinces were established by their own independent legislatures before the Union. Clause 93 only perpetuated rights established by the people themselves. But the people of the Territories never acted, because they had no authority to do so, and the minute we became a province we should have been given full authority to deal with the matter as seemed to us best.

The question of the abolition of Separate Schools is a big one, and we do not ask the Government to bring that about immediately, we know it cannot be done in six months or in a year, but we think that at the first opportunity it should be referred to the people, and if the Government will make that a plank in their platform at the next general election we will guarantee that so far as we are concerned (although we are composed of both Liberals and Conservatives), we are united on this question and will support the party which does as we ask. I come in contact with people in all parts of the Province, and I know that there is a tremendous feeling prevalent that one national system is the best for us. As a people we say the Province has the right to abolish Separate Schools. We have the opinion of three eminent lawyers to the effect that the Province has that right.

Mr. Scott: Would you let us have the opinion? Is it in writing?

Mr. Armstrong: Yes, it is in writing and I have no personal objection and think the committee may favourably consider your request.

Mr. Scott: You see the immediate significance of a public statement that three eminent lawyers have given it as their opinion that the Province of Saskatchewan has the right legally and constitutionally to establish and maintain a national system of schools, that is to say, to abolish the Separate School system which exists—you see the significance of the statement.

Mr. Armstrong: Yes.

Mr. Scott: I think the public should have the names

of the lawyers and their opinion and the line of reasoning by which they arrive at that conclusion.

Mr. Armstrong: We have not discussed it in committee but I will take it up with them. Personally I would be willing to let you have a copy of the opinion.

We think that when the war is over we will have a large foreign immigration to our shores and either we will have to lift these foreigners up to our level or they will drag us down to their level, and this is the time in our opinion to consider establishing one system of national non-sectarian schools. We are willing to leave the decision to the people, and we agree that we will support any party, Liberal or Conservative, which makes this question a plank in their platform.

Mr. Scott: Before you deal with that I should like you to indicate more clearly the course which the provincial legislature should follow in doing what you suggest.

Mr. Armstrong: Well, I would suggest that either at the next Provincial election the Government should make that a plank in their platform or—

Mr. Scott (interrupting): What should the plank say?

Mr. Armstrong: The abolition of Separate Schools.

Mr. Scott: That is a very indefinite expression. The real point is this, can the Legislature do it without any precedent action?

Mr. Armstrong: We have the precedent in Manitoba.

Mr. Scott:—I mean *preparatory* action. The three eminent lawyers have given their opinion that the Legislature can abolish Separate Schools and establish National Schools and have it sustained in the Courts. Your suggestion is that the Government and the political party which supports the Government should go before the people with the plank of National Schools without any preparatory action to ascertain our powers in the matter?

Mr. Armstrong: Yes, that is our suggestion. To put it in short form, the suggestion is that the Saskatchewan Act, so far as it relates to education, and deprives us of our educational rights, is *ultra vires* of the British North America Act.

We think those amendments to the Educational Act and the School Assessment Act passed during the session of 1913 should be repealed. We see no reason why that should

not be done as soon as possible and before an election takes place. We think any law which makes dogma and not volition the determining factor as to whether the individual should support a Public or Separate School is a bad law and contrary to all principles of British law and freedom. So far as I know, Saskatchewan is the only Province in Canada which has a statute of that kind in operation. We do not know of any other Province which compels citizens, because of their religion, to support a certain system of schools.

Mr. Scott: Certainly Alberta does.

Mr. Armstrong: That is just with reference to the School Assessment Act.

Mr. Scott: It is clear enough, that is to say, Roman Catholic or Protestant stock holders in companies belonging to the faith of the minority are required in Alberta to pay their taxes to the minority school.

Mr. Armstrong: I have not gone into that matter, but have noticed a statement by the Minister of Education of Alberta that the Attorney-General of that Province has given it as his opinion that citizens are free to support any school they like.

Mr. Scott: Speaking of the School Act, yes; but their Assessment Act unquestionably and beyond any dispute requires the taxes of company shareholders in districts where there is a minority school to be paid according to the shareholder's religious faith, that is, if it is a Protestant minority school all the taxes of Protestant shareholders in taxable companies are to go to the minority school. The Alberta law specifically requires this. It is a matter of fact, not one of opinion at all.

Mr. Armstrong: I was under the impression and was led to believe that there was such a law as regards companies, but as regards individual citizens they are given the liberty I think in the Province of Alberta to choose their own school.

Mr. Scott: I may say that I don't think so. We have received an expression of opinion from the Minister of Education in Alberta and he purports to give the Attorney-General's opinion on the subject. What does that bind?

Mr. Armstrong: I made the assertion that it was so far as I knew.

Mr. Scott: So far as I know the situation in Alberta is

just the same as it is here in relation to the School Act and it has always been the same.

Mr. Armstrong: The law is not quite the same. They have passed no amendment to the School Act having the same object in view as the Saskatchewan amendments.

Mr. Scott: They have not been required to so far as I know, that is, no confusion arose between judgments of Assessment Revision Courts, which has happened unfortunately in Saskatchewan.

Mr. Armstrong: Granting, for the sake of argument, that what you say is correct. It is immaterial to us whether or not Alberta has a law on the statute books to that effect.

Mr. Scott: You will understand again, though, the significance on the minds of the people of a statement such as yours to the effect that "there is no Province other than Saskatchewan," when there is the adjoining Province of Alberta which does require it and passed the law two years before we did with regard to companies.

Mr. Armstrong: The law as it affects citizens, individuals, has not been altered—you agree with that, Mr. Premier?

Mr. Scott: Yes, but I should not let you go on without saying that the law here has not been altered.

Mr. Armstrong: There is a difference of opinion there.

Mr. Scott: Speaking officially as Minister of Education, advised by the officials of the Department including the Superintendent, also speaking as head of the Government, and making a statement of that kind, well to say the least, I submit that my statement is worthy of some attention.

Mr. Armstrong: Yes, but because the Province of Alberta has a law to that effect surely that is no reason why we should place ourselves in such unfavourable light before the world that by reason of his faith a man is bound to support a Separate School which he does not believe in. I know there are English speaking Roman Catholics very much opposed to our dual system of schools and a compulsory law of that kind. We could have had a delegation of English-speaking Roman Catholics come here with us to-day and present the same views as we are advocating now, but as it was arranged for this meeting to be for the Orange Association, and as we are representing exclusively the Orange Association, we didn't think it wise to act in conjunction with anybody else.

We think, then, that these amendments should be repealed.

We think further that the French language should be put on the same basis as any other foreign language in this Province so far as its teaching in our schools is concerned. There is a prevalent idea I know that the French language has a standing in the Province which no other foreign language has. We fail to discover anything in the constitution to that effect. If there is I should like to know it. Any superior standing it has must have been conferred by the legislature of the Province.

Then we say there should be a compulsory education law enacted. Of course we have one now, but it is a dead letter. We don't want any drastic measures. We find children are being brought up in this Province who are receiving no education whatever—kept on farms and other places working, and are not receiving that education to fit them for the battle of life and then for future citizenship in this Province, and something should be done to remedy this state of affairs.

We think, also, that what is known as the Educational Council should be abolished altogether. We see no reason for its existence. If an Educational Council is absolutely necessary, however, then we think it should be free from all religious tests. We see no reason why two members out of five should be Roman Catholics. We think that is altogether out of proportion to the Roman Catholic population of the Province. It is a bad policy to build up our institutions on a sectarian basis. But only eighteen and a half per cent. of the population of the Province is Roman Catholic; they are not even entitled to one member out of the five composing the Council. We say abolish it altogether, but if that is not expedient, then abolish all religious tests. A man's religious views surely cannot qualify him for this or any other position in the state.

Now I think that covers everything that we ask.

Mr. Dawson (Reminded *Mr. Armstrong* of another matter with the remark): "English in schools."

Mr. Armstrong: Yes, I was nearly forgetting. We think English only should be taught in our schools and that it is in the best interests of this Province to have every child on leaving school able to read, write and speak English.

Mr. Calder: There is no difference of view about that. Excuse me just a moment—(addressing Mr. Armstrong)—do you go so far as to advocate that the provision in the law allowing a foreign language to be taught for half an hour should be taken out, or simply conduct the school in English up to when that half hour begins.

Mr. Armstrong: We contend that no foreign language should be taught in our primary schools at any time.

We think something should be done also in regard to Private Schools. I don't know, we have not gone into the situation, but surely the Government of the Province has some authority to compel these people to employ duly qualified teachers and to teach the English language in Private Schools. Compel them to get organized into school districts in order that children in the foreign settlements may have the same advantage as others with regard to a knowledge of the English language. It is estimated that there are 1,500 children attending schools in the Province who never hear a word of English. Some take the stand that as we have invited these people here, and in some cases paid \$5.00 a head to get them here, we would be doing them an injury by depriving them of the use of their own language. We take the stand, however, that although we invited them to come, and we are glad to have them, we want to make good Canadian citizens of them. We are not dealing with these people in a fair way if we do not see to it that they get an education in the English language. We did not ask them to come here to remain Germans, Austrians, Galicians, and so on, but to be Canadian, and get accustomed to our free institutions, learn our language, and become good British subjects.

Doctor Black, speaking at a convention in this City last September mentioned that he met a young fellow, a Mennonite, I think, who said he was only a child when he came to the West and his parents didn't see the necessity of his learning English. "They were ignorant people and I cannot blame them," said he, "but I must blame the Government for not seeing to it that I received a knowledge of English, because I am handicapped as long as I live because of my imperfect knowledge of it." That is the way I think we should look at the matter.

Without taking up any more of your time, Mr. Premier,

as I realize you are busy and have other matters of great importance to attend to, we believe these matters are very, very important. We are not interested in the advancement of one political party more than another. We hold ourselves aloof from both parties, but we are united on one thing, viz. the establishment of a purely national school system. We have succeeded in turning Governments out of office because they tampered with the national system of education existing in certain Provinces.

Mr. Scott: Just on that point, as a matter of interest, not to argue the matter, would you mention the Governments you refer to?

Mr. Armstrong: I have no objection at all but as I have said I don't want what I say to be misconstrued into anything of a partisan character. The late Roblin Government passed what is known as the Coldwell Amendments and after we had endeavoured in vain to get them repealed the members of the Orange Association almost unanimously voted against that Government and their majority was reduced to such an extent that they resigned almost immediately afterwards.

Mr. Scott: I am not advancing this either by way of contention because there is a great deal of truth in what you say, but there was another tremendous consideration in Manitoba apart altogether from the educational question.

Mr. Armstrong: Yes, I am quite willing to concede that, but Mr. Roblin made the statement on the night of the election that he attributed his defeat to the Orange Association.

Mr. Scott: To that he attributed his narrow majority?

Mr. Armstrong: Yes.

Mr. Scott: Any other Government?

Mr. Armstrong: Tupper.

Mr. Scott: I would remind you that Tupper carried Manitoba and Ontario but was defeated by Quebec.

Mr. Armstrong: I would like to have that in black and white. I do not now dispute your word, but there is evidently a misunderstanding. The late Hon. N. Clark Wallace, Grand Master of the Orange Association, then held the position of Comptroller of Customs in the Government of Sir Mackenzie Bowell, but resigned his office rather than sacrifice his principles on the educational question

when the Government attempted to bring about the restoration of Separate Schools in Manitoba and he appealed to the Orangemen to do what they could to defeat the Government. He worked himself to defeat it, and it was defeated.

Mr. Scott: I may be wrong. There was, to the best of my recollection, a very narrow majority in Ontario and a distinct majority in Manitoba for Tupper. If the result had depended upon the Protestant Provinces of Manitoba and Ontario Tupper's policy would have been endorsed. It was Catholic Quebec that defeated the coercion policy.

Mr. Armstrong: I will look further into it. I cannot give the exact figures at present, but do know that the Orange Association took a strong stand against the Governments of that day and we claim it was through their work that the Government was defeated.

We have always stood for this principle, the one school system. We don't care what party promises to bring about the adoption of that principle, we are prepared to support them. A non-sectarian Public School is what we advocate.

Mr. Scott: We have that in this Province already. All our schools are non-sectarian schools with the privilege enjoyed of closing the school at 3.30, after which religion may be taught. That is a privilege which applies equally to Protestants as well as Roman Catholics, equally in Public as in Separate Schools.

Mr. Armstrong: Granting you that, but if you divide children because of their faith and educate them in hostile camps, there are bound to be misunderstandings and suspicions between them as citizens in future years. The only way to make the people united and build up a homogeneous nation is to educate them all together.

We hear it said to-day by political leaders, that after the war is over, after the Irish Roman Catholics and Protestants have fought side by side on the battlefields of Europe, the questions which have divided them in the past will no longer exist. I grant there may be something in that, but how much more strongly will that apply to children brought up and educated altogether at the same school?

Mr. Scott: This might be a fair question. If you were a resident of Belfast now, would you advocate laws and principles which you are advocating here this morning?

Mr. Armstrong: Yes.

Mr. Scott: You would find yourself in opposition to the Presbyterian Church there. They have demanded guarantees just in the same way as did the Quebec Protestant minority before 1867, and as a matter of fact when the guarantees were offered by Redmond these were refused and Belfast threatened rebellion before accepting Home Rule, because Home Rule meant a Catholic majority controlling the Government.

Mr. Armstrong: Conditions are altogether different there and it is hardly an analogy with the Province of Saskatchewan.

Mr. Scott: Anyway the stand of the Irish Protestant is enlightening even if the conditions there and here are not identical.

Mr. Armstrong: The children of all nationalities should be educated together.

Mr. Scott: The minority in the North of Ireland would not agree to it. If left to be governed by the Catholic majority in Ireland they demanded a separate system.

Mr. Armstrong: In the United States there is only one system.

Mr. Scott: That brings up a question I was going to ask you. How do you propose to safeguard against the dangers of the situation existing in the United States of America? The State there has lost control of an increasing number of children owing to the rigidity of their national school system. Rather more than one and a half million children, more Protestants than Catholics, are educated in parochial schools in which, so far as I know, there is no Government Control. These Protestants are mainly Lutherans. How do you propose to safeguard against that here under the system you propose?

Mr. Armstrong: Is there no way of dealing with the inspection of Private Schools, qualifying of teachers and so on?

Mr. Scott: Our law already provides for this, that it leaves the parent punishable if he does not abide by the truancy feature of the law and send his children to the Public School unless his child is receiving an efficient education at home or elsewhere. I may say to you (to give an inkling of the fact that it is not a simple question), in one instance the

parent of Mennonite children was taken before Court three times, convicted, and fined under our law, but it did not change his ways. We might take all the Mennonites (speaking generally) to Court and convict them day after day but it would not change their conduct at all. Would you proceed further and put them in jail? That would not change their conduct. They have religious convictions about the matter. Further than that they will come to the Legislature and submit a document which was given to them by the Government of Canada guaranteeing full liberty should they come to Canada, both in matters of religion and education. That certainly complicates the situation as regards Mennonites, and the Mennonite problem in regard to parochial schools is the only serious problem.

We have some parochial schools in Roman Catholic districts, but I have reason to believe that the English taught in all Roman Catholic private schools is efficient. At Muenster where most of these schools are, English is as well taught as in the Public Schools. The children going to these schools are children of American-German parentage. The parents speak English very well and their children are taught it. There is no serious problem with them. More serious is the Lutheran condition, as with them they don't run the school regularly the year round. The school starts say this month and runs for several weeks, and it disorganizes and dismantles the Public School by taking away its children, but not permanently. Public School Boards in a few cases have found the Lutheran School troublesome on this account. Our law is substantially the same as Alberta's in the matter of truancy, but they have gone further in administration, and in that direction I think we may wisely follow Alberta's lead. I cannot speak so confidently with regard to the Lutheran Schools as of the Roman Catholic Parochial Schools. The Mennonite problem is one of exceeding great difficulty on account of the facts stated.

Mr. Calder: The Province of Alberta has within recent years passed a separate Truancy Act and the new Act provides administration machinery which we have not. This is a matter for us to consider. It provides means by which they can secure better administration and I think while we are dealing with the general question of education

the law may be amended and we will then try to secure better attendance at schools.

Mr. Armstrong: Glad to hear that.

I have endeavoured to put the views of the Orange Association of the Province before you in as frank a way as possible. We do not want to use any harsh measures, make threats, enter politics, but we are deeply interested in the question of education. Holding the views we do we say it is more important than many other questions which take up time. We think the national or Public School system ought to be considered, and is as much a Government institution as the Post Office. We believe all citizens should be compelled to support the Public School system. If they want Private Schools of their own let them do as in the United States of America. They have the Public School system which must be supported and that is the system we are advocating.

I thank you on behalf of the committee present and on behalf of the Orange Association for granting us the privilege of presenting to you our views. We do not ask that all these things be done at once, immediately, but we do ask that gradually the system of national schools should be established and the abolition of Separate Schools be brought about eventually.

I thank you for listening to me.

Hon. Walter Scott: I am sure that I speak for my colleagues when I say that I appreciate very much the exceedingly clear and also moderate way in which you have made the representations on behalf of the Orange Order. Quite a number of the things which you have contended I am in thorough agreement with. At present I am not disposed to enter into discussion about Separate Schools because I am so thoroughly convinced that the Province has not the power to abolish the Separate School system. I will be interested in examining the legal opinions which you have, and something which you said later on indicates to me the line of the opinion, which is this: that in 1905 the Canadian Parliament did not have full authority in granting our constitution, that is to say, that their authority was limited by the scope of the British North America Act of 1867.

I am not a lawyer, but I have listened to a good deal of legal discussion on the point and I am of the opinion that the contention has not a single leg to stand on. The contention is that the Canadian Parliament was bound to follow strictly the line of the British North America Act and did not have the right to make any variation. In 1870 Parliament granted the constitution of Manitoba and it did make variations and particularly made a variation on this very subject.

Mr. Armstrong: Pardon me. Was that Act not validated afterwards by the Imperial Parliament?

Mr. Scott: Yes, and the validating Act went further and gave full authority to the Canadian Parliament to do again in the case of any future new Provinces what was done in the case of Manitoba. So I think the contention falls down immediately. The Canadian Parliament in 1870 thought that possibly their power was limited and that they had exceeded it in the case of Manitoba, and to make quite certain went back to the Imperial Parliament to have their work validated. The Imperial Parliament therefore passed a Validating Act, which is referred to as the British North America Act 1871, isn't it? Besides declaring valid the Manitoba Act, this British North America Act 1871 goes on and gives the Canadian Parliament complete and absolute power to legislate for future new Provinces. To illustrate, Parliament in 1905 had legal power to fix it that all Saskatchewan schools for ever should be controlled by Ottawa. No doubt at all about it. There is no limitation now upon the power of Parliament in making a constitution for new Provinces. Don't you think your contention falls down?

Mr. Armstrong: I don't see it that way.

Mr. Scott: Let me grant for the moment that the contention is good, it does not help the case. (Here Mr. Scott cited Section 93 of the British North America Act.) He said—"If Section 17 of the Saskatchewan Act is found invalid owing to Parliament possessing no power to pass it, then certainly Section 93 British North America Act takes its place. What then? Would Saskatchewan have a free hand as regards Separate Schools? I think not. I think Section 93 would turn out to impose the sectarian school, the clerically-controlled school that we did have in accordance with the 1875 North-West Territories Act from 1884

to 1891. It is indisputable that under that 1875 Act Roman Catholics here did enjoy the right to separate, to set up the Separate School and also to control it. The 1875 Act would be necessarily and certainly held to be superior to the Haultain School Ordinances, and it would be the minority rights and privileges as defined in the 1875 North-West Territories Act instead of the Haultain School Ordinances which Section 93 would fix upon Saskatchewan.

Mr. Armstrong: We take the stand that it was in 1870, when the Territories were purchased, that the union took place, and not when the provinces were erected in territory already a part of Canada.

Mr. Scott: That argument is exceedingly doubtful. I think there is one chance in a thousand of its holding good. If it did not hold good, we should have thrown away the substance in grasping after the shadow, we should have lost our non-sectarian school and would have got instead a full-fledged clerically-controlled sectarian school, as Ontario has it. To risk what we have on this slim chance of getting absolute freedom looks to me too much like taking a desperate gambler's chance, because if we lost on the chance we should lose the large measure of freedom which Section 17 (Saskatchewan Act) gives us, that is, the power to absolutely control the conduct of the Separate School.

If Section 17 be abrogated and if then the effect of Section 93 were being determined by the Privy Council, the Privy Council in examining your contentions that the minority under it possessed only such rights as existed in 1870 (which were nil) would naturally look to see what the statesmen had had in their minds. The words "by law in the Province at the union" might mean "by law in the uninhabited prairies in 1870 when the North-West Territories and Rupert's Land were acquired by Canada" (when no law existed)—I say the words might be held to carry the meaning of your contention, but I think it is only a one-in-a-thousand chance. I think the 999 chances are that the words "by law in the Province at the union" would be held to mean rather "by law in force in the area at its union as a Province in the confederation of Provinces" and when the Privy Council looked at the recorded minds of the statesmen they would find that Lord Carnarvon, mover of the British North America Bill at Westminster, in 1867,

announced clearly and definitely that the curious Separate School policy in the Bill (Section 93) was intended to apply upon future provinces as well as upon the Provinces then being united. Then the Privy Council would find nearly all the Canadian statesmen dealing in 1870 with Manitoba, a part of the same territory as Saskatchewan, declaring explicitly and emphatically that such Separate School rights as existed "in practice" as well as law, should be guaranteed, showing that it was not alone in the Provinces that as free agents united in 1867 where Section 93 was to apply. Then the Privy Council would find the same Canadian statesmen, the Fathers of Confederation who made the compact and thus knew what it was intended to mean, dealing in 1875 with another part of the new area, and passing the North-West Territories Act. They would find Sir John Macdonald saying or voting that the new Territories must have Separate Schools, and that Alexander MacKenzie, Edward Blake, George Brown (the latter as strong an enemy of Separate Schools as ever lived) and others declaring and voting that in accordance with the Confederation agreement Separate Schools must be imposed in the new territory, and they would find that the North-West Territories Act was passed in harmony with what all these statesmen said. Blake said that he voted then for Separate Schools because it was urgent that conditions should be plainly fixed at the outset so that immigrants would know what laws they should have to live under before they moved. The Privy Council would find that every single Canadian statesman in 1875, those voting against, as well as those voting for, Separate Schools in the North-West Territories, believed that they were deciding the matter for all time, and that the Separate School rights created then in the Territories would continue under the Canadian Union scheme for all time to come.

I am very clear in my mind that Saskatchewan is saved from the sectarian school by the fact that in 1891 or 1892 the people of the Territories by and through their Legislative Assembly made a new school law to their own liking and largely regardless of the North-West Territories Act of 1875, by the fact that for fourteen years this system of separate but non-sectarian Schools operated satisfactorily, and by the fact that according to the views of the majority

in Parliament in 1905 the spirit of the Confederation Act would be met by safeguarding only the rights and privileges in this non-sectarian system, because for fourteen years this system had been the only separate system existing in fact and practice in the area.

Your contention is too slim to be risked. I think it would be in the last degree unwise, if not positively criminal, to risk losing the very good thing we enjoy for that extremely narrow and unlikely chance of full freedom, with the chances 999 to one that we should instead lose our freedom and have to submit to sectarian schools.

I think Parliament had complete authority in 1905. If I am wrong it would be unfortunate for our freedom, because if I am wrong then Section 93 is our education constitution, and there is no question in my mind but Section 93 would impose sectarian schools.

I am convinced that the Saskatchewan Legislature has no power to abolish the Separate School system which we have, and until that conviction is changed you will agree that it is useless for me to enter on a discussion of the Separate School itself.

I have colleagues who perhaps agree with you about national schools and that it would be far better that no separation should exist, and I do not say that I disagree, but this is not the point. You agree with this, if we are bound and cannot do away with the Separate School system except by consent of the Imperial Parliament, it is useless for you and me to discuss it.

Mr. Armstrong: Why not take steps to find that out?

Mr. Scott: How would you find it out?

Mr. Armstrong: Refer it to the Courts.

Mr. Scott: In 1906 we did all that we could as a Province towards steps to have a case stated and how far did we get? Show me the method of going to the Privy Council, and, whilst not speaking for the Government, I will seriously consider it if you will indicate the method. You recollect the decision of our House in 1906 on the resolution of Mr. Sutherland of Saskatoon.

Mr. Calder: The matter came up in the House on several occasions. Back in the 1905 elections the chief argument was that we should contest the case and have it taken to the Privy Council. Now as you can understand during the

sessions that followed that was the main point which arose out of the election. We were repeatedly asked in the House: "How are you going to get this case to the Privy Council?" So far as my recollection goes no practical method has ever been suggested how it can be done.

Mr. Scott: We cannot send a stated case beyond our own Courts. In reality it is almost impossible to get our own Court, notwithstanding the law, to decide a stated case. The Courts do not like abstract questions; they have said so repeatedly. We tried it in the Saskatchewan and Western Land Co. case, but did not get a decision.

Mr. Calder: We have a statute to enable us to submit to our Supreme Court any question of interpretation of the law but we cannot go beyond that. We have no power to require the Supreme Court of Canada or the Privy Council to consider any question as to the interpretation of the law.

Mr. Armstrong: Did not the Privy Council in the case of Barrett vs. City of Winnipeg decide that the minority in the Province of Manitoba had no right to Separate Schools either by law or practice?

Mr. Scott: That decision in effect was that there were no Separate School rights either by law or in practice¹ when Manitoba was made a Province.

That is as I view it—until it is established that the hands of this Province are free to abolish Separate Schools, it is useless for us to discuss their abolition. But there are matters which you have presented, say the Truancy Law, that will be considered and I think it may well be dealt with in the general educational enquiry now under way. The present law can be strengthened, I think; at all events, our administrative methods and machinery can be strengthened so as to procure better attendance in our schools. On the language question there is not very much difference between us. Our law already practically requires English to be exclusively taught until 3.00 p.m., leaving a one-hour permission for other languages. I am not prepared to say that the Government would be willing to do away with that privilege. It has stood for a long time, it existed in the old order of things, and the question will require some consideration. I put in one sentence yesterday in speaking

¹ This statement of the case is misleading.

in the debate on the address, a point which I intended our people to look at by referring to the situation in South Africa. I mentioned the wonderful things done by the people fighting for us there who until a few years ago were fighting against us. If the British authorities had hewed to the line in South Africa as some want to do here in dealing with the non-English, do you think for a minute that the situation would have been such that Botha could have done what he has done in this terrible crisis? I think it shows the advantage of not always hewing to the line but of dealing generously.

With regard to parochial schools that is a serious matter for consideration and already has had some discussion. My mind is open with regard to it. At present, I merely say this, that while inspection of parochial schools of an indirect character exists in other Provinces (in Alberta only of an indirect character under the Truancy Act and simply to ascertain whether the child who is not in the Public School is receiving efficient education) I do not think there is any constitutional limitation on us with regard to parochial schools. We have power to prohibit all parochial schools and have nothing but Public and Separate Schools. It is a matter of policy whether it should be done. We have the right to say to the Presbyterian or Methodist College, "Close up." Should we adopt such a policy?

My daughter at the present time is going to a school in Montreal. What would you think of a law which said to me, "Bring your daughter back and place her in the State school here." The State may say to me, "You have no right to send her to Montreal"; we have a university in Saskatoon, where of course a different class of instruction is given from that given in Montreal where she is.

You see the point. The State may in its policy go too far and we should, I think, be guided by what other countries have found it advisable to do. If there is any country which believes in the single system of national schools it is the United States of America. Why have they not closed parochial schools? Their system is based on democratic principles—the principle that my interest depends upon my neighbour being educated, trained, etc., so that he can vote intelligently on the questions of Government under which I live, and in the United States of America, they say, there-

fore, that the State should control the education of every child. And what is the outcome of their rigid non-sectarian system? Does it achieve the object? No, you know that some one and a half million children do not go to the State school at all. The Lutherans teach education and religion as they choose in parochial schools. So do Roman Catholics in the United States of America. These are things we have to give consideration to. It is a matter for very careful consideration. In reality, except with regard to the Mennonites, it is a question that has not been forced upon my attention or upon the attention of the Department of Education until very recently.

The Mennonite question, like the Doukhobor question, has received the attention of the Department for a number of years, and we have been trying to find some persuasive method by which to get the Mennonites to see things differently and come under the Public School system. I doubt if the Mennonite problem will be best settled by any application of coercive methods.

Mr. Calder: Just one moment if I may be allowed to intervene, there is only one sect among the Mennonites opposed to the Public School; the great majority are in favour. The minority you can punish as you like and they will stand pat, so you can see the difficulties of the problem. So far as the Doukhobors are concerned, there was only the one class under the control of Peter Veregin who opposed the Public Schools, and a large number of his followers have gone to British Columbia. The officials there are having the same problems which arise from purely religious convictions and the difficulty is to know how to deal with them. There are, though, only two religious sects who stand out very strongly against the Public Schools.

Mr. McNab (addressing Mr. Armstrong): You know the districts where the Mennonites are—between Warman and Hague. Once you get past Hague they have Public Schools, and there are also some round Rosthern.

Mr. Scott: I think I have said all that I wish to say now. These are matters which we are considering very earnestly and we are glad to have your representations, which will doubtless be an aid to us in our consideration.

The only question on which I cannot at present, at least

in some measure, agree with you is the constitutional position of the Province in relation to Separate Schools.

It so happens that I have just completed another letter to Mr. MacKinnon and will read you the paragraph bearing on this point.

(Here Mr. Scott read various paragraphs of his letter to Mr. MacKinnon which was made public January 22nd).

APPENDIX III

(Extracts from the *Saskatoon Daily Star*, May 8 and 11, 1916.)

SASKATCHEWAN SCHOOLS

THE FRENCH LANGUAGE

(1) Before coming to a consideration of the use of the French language in the schools, it is necessary to consider in its more general aspect of the use of French as a privileged language in the debates of the Legislative Assembly, its use in the printing of the Legislative journals, its employment in the *Saskatchewan Gazette* and its status before the Courts. To understand its use in Saskatchewan it is necessary to briefly refer to its position in the Dominion at large.

The Quebec Act sought to satisfy the French in Canada by safeguarding to them the free use of their religion and the maintenance of their customs. It did not, as such, make French an official language of Quebec.

The Act of Union of 1840 definitely prescribed that the proceedings and reports of the Legislative Council and of the Legislative Assembly should be in the English language only. Translations might be made in French, but no such documents were to be kept among the records or have the force of an original record. This provision, demanding the exclusive use of English was repealed in 1848 and the law which now governs the Dominion status of French is Section 133 of the Confederation Act of 1867. This provides for the use of both the English and French languages in the Houses of Parliament of Canada, in the Legislature of Quebec, the Courts of Quebec and in any Court of Canada.

Turning to the situation in Western Canada we see that the Manitoba Act of 1870 provided for the use of both English and French as official languages in Manitoba and this continued to be the case from 1870 until 1890 when the French language was abandoned in the proceedings of the Manitoba Legislature and an Act was placed on the statute book of Manitoba, which still stands, in which English is definitely named as the official language of the Province.

Turning to the North-West Territories, the charter of the Province is really the Act of 1875. This Act made no reference whatever to the languages to be used. The Dominion Parliament, however, took up the question and in 1880 introduced certain legislation which set forth the following:

"Either the English or the French language may be used by any person in the debates of the Council or Legislative Assembly of the North-West Territories and the proceedings before the Courts; and both these languages shall be used in the records and journals of the said Council or Assembly; and all ordinances made under this Act shall be printed in both these languages."

In 1890 the Canadian House of Commons declared it expedient and proper that the Legislative Assembly of the North-West Territories should have, after the next general election of the Assembly, the right to decide for itself the question of the continued use of French, and in 1891 the Dominion Parliament enacted the following legislation:

"Either the English or the French language may be used by any person in the debates of the Legislative Assembly of the Territories and in the proceedings before the Courts and both these languages shall be used in the records and journals of such Assembly, and all ordinances made under this Act shall be printed in both those languages; provided, however, that after the next general election of the Legislative Assembly, such Assembly may by ordinance or otherwise regulate its proceedings and the manner of recording and publishing the same; and the regulations as made shall be embodied in a proclamation which shall be forthwith made and published by the Lieutenant-Governor in conformity with the law and thereafter shall have full force and effect."

What occurred then in the Territories? Ever since December 8, 1883, the debates of the Legislative Assembly in the North-West Territories had been published in French as well as in English and the *Gazette* continued to be so published until August 15, 1895. On January 19, 1892, Sir Frederick (at that time Mr.) Haultain took up the question of the publication of the journals of the House, and in the records of the first session of the second Legislative Assembly, it is

recorded in the journal (North-West Territories 1891-92, p. 110):

"Moved by Mr. Haultain, seconded by Mr. Tweed:

"That it is desirable that the proceedings of the Legislative Assembly shall be recorded and published hereafter in the English language only.

"And the question being proposed it was moved in amendment by Mr. Prince, seconded by Mr. Mitchell:

"That whereas in the election districts of North Qu'Appelle, South Qu'Appelle, Moose Jaw, Red Deer, Edmonton, St. Albert, Battleford, Prince Albert, Cumberland, Mitchell and Batoche there is a large population of French-speaking Canadians,

"And whereas the French language has been recognized as an official language in the North-West Territories in consideration of the services rendered to this country by the first Canadian voyageurs and missionaries who evangelized, civilized and settled there at the cost of many lives,

"And whereas the French-speaking population is increasing every day and in the interests of the cause of immigration in the North-West Territories no act should be done tending to make it appear that the people of the North-West Territories are lacking in justice, liberality or political tact in regard to the national interest of every Canadian;

"Therefore, be it resolved that it is not in the public interests that any change be made in the system of public printing in the North-West Territories as far as the use of the French language as an official language is concerned."

No journals can be found in any department of the legislature or in the Provincial Library, that were ever published in French but it may have been the case that they were translated and perhaps sent to Quebec for printing. In any case neither the *Gazette* nor the journals are now published in that language and French has no official status in debates in the legislature, or for the *Gazette* or for the journals or in any Provincial Court, that is not accorded to any other non-English language.

English is, as a matter of fact, the official language of the Province although there does not exist as in the case of Manitoba a precise statute so defining it, and there is no

ground in the historical past or in the present condition of the Province for making any other language than English the official language of the Province.

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(2) Turning now to the status of French in schools the legal aspect of the question is indicated in the following educational clauses:

In the Ordinances of the North-West Territories of 1887, Section 83 reads:

"All schools shall be taught and instruction given in the following branches, viz.: reading, writing, orthography, arithmetic, geography, grammar, history of England and Canada, English literature; and such other studies as may be deemed necessary may be authorized by the trustees of the district. Instruction shall be given during the entire course in manners and morals and the laws of health, and attention shall be given to such physical exercises for the pupils as may be conducive to health and vigor of body as well as mind, and to the ventilation and temperature of schoolrooms."

In the Ordinance of 1888 two small but by no means unimportant changes were made to the above quoted provision. Section 82 of the Ordinances, North-West Territories, 1888, omits the words "and such other studies as may be deemed necessary may be authorized by the trustees of the district." In addition to this the following sub-section is added:

"It shall be incumbent on the trustees of all schools, organized under this Ordinance, to cause a primary course of English to be taught."

The next change takes place in the Ordinances of 1892, when Section 83 reads as follows:

"All schools shall be taught in the English language and instruction may be given in the following branches, viz.: reading, writing, orthography, arithmetic, geography, grammar, history of Britain and Canada, French and English literature in accordance with the programme of studies prescribed by the Council of Public Instruction. Due attention shall be given during the entire school course to manners and morals, and the laws of health and to such

physical exercises as may be conducive to health and vigor of body as well as of mind, and to the ventilation and temperature of schoolrooms.

"It shall be permissible for the trustees of any school to cause a primary course to be taught in the French language."

In the Ordinance of 1896, Section 106 reads as follows:

"All schools shall be taught in the English language, but it shall be permissible for the trustees of any school to cause a primary course to be taught in the French language."

It will be seen from the above extracts from the Ordinances that when the educational system of the Territories was established, considerable latitude was allowed the trustees of a district in shaping the course of study, but that in the first Ordinances English literature was made a compulsory subject for all.

In 1888 it was made compulsory that in all schools there should be taught a primary course in the English language. That is to say that the teaching of English was compulsory in the primary courses.

In the year 1892, at the conclusion of the famous struggle for Home Rule or equal rights, a reorganization of the educational department took place. A Superintendent of Education was appointed and the uniform inspection of schools was instituted. The language question takes on a new form. All schools must be taught in the English language, but instruction may be given in a number of branches in which are included English and French literatures, and to these is added a section which has since become stereotyped, namely:

"It shall be permissible for the trustees of any school to cause a primary course to be taught in the French language."

As Dr. Oliver indicated in his paper on "The Public Schools in the non-English Speaking Communities," the Ordinances of 1892 and 1901 together with the regulations of the Department of Education have been the determining factors in the situation. The relative sections of the Ordinance of 1901 are as follows:

(1) "All schools shall be taught in the English language,

but it shall be permissible for the board of any district to cause a primary grade to be taught in the French language.

(2) "The board of any district may, subject to the regulations of the Department, employ one or more competent persons to give instruction in any language other than English in the school of the district to all pupils whose parents or guardians have signified a willingness that they should receive the same, but such course of instruction shall not supersede or in any way interfere with the instruction by the teacher in charge of the school as required by the regulations of the Department and this Ordinance."

(37) "The board shall have power to raise such sums of money as may be necessary to pay the salaries of such instructors, and all costs, charges and expenses of such course of instruction shall be collected by the board by a special rate to be imposed upon the parents or guardians of such pupils as take advantage of the same." I understand that the Attorney-General's department has ruled that the instruction in French provided for by this Ordinance is not subject to the regulations of the Department of Education.

The status of French in our Public Schools may be summed up as follows:

(1) "There is no historical past for French in Saskatchewan, and there were no educational rights of the French to conserve in 1870.

(2) "In 1888 it was made compulsory to teach a primary course in English in the schools.

(3) "Not until 1892 did the question of French teaching arise and then it is provided that 'all schools shall be taught in the English language' . . . but it is permissible to allow a primary course to be taught in French.

(4) "That the French language occupies a privileged position as compared with other non-English languages is entirely due to legislative enactment both of the Territories and of the Province, and that its continuance in this position remains entirely with the Legislative Assembly.

(5) "The Saskatchewan Act of 1905 placed no restriction on the competence of the Legislature in dealing with the language question."

APPENDIX IV

VONDA, SASK., Sept. 15, 1911.

The Town of Vonda Appeal from Court of Revision.

"The grounds taken in this appeal are very broad indeed, they are to the effect that the various parties assessed being by religion Roman Catholics must of necessity be supporters of the Separate School.

"Mr. Mundie for the appellant admitted that there was no direct legislation on the point, but he relied on Section 279 of the Town Act which is as follows:

"If any person named in the said Roll thinks that he or any other person has been assessed too low or too high, or that his name or the name of any other person has been wrongly inserted in, or omitted from, the Roll or that any person who should be assessed as a Public School supporter has been assessed as a Separate School supporter or vice versa, he may within the time limited, etc. . . .

"I cannot bring my mind to the conclusion that this Section has any such result. It gives a right of appeal, and one of the grounds that may be taken is that set forth in the latter part of the Section, but by Section 293, subsection (4) 'the assessor shall accept the statement of any ratepayer, or a statement made on behalf of any ratepayer by his written authority that he is a supporter of Public Schools or Separate Schools as the case may be, and such statement shall be prima facie evidence for entering opposite the name of such person, the letters PSS or SSS, etc. . . .

"Now this section appears to me to contemplate that the option of supporting either school rests with the ratepayer, and the latter part of the section I first quoted appears to me to have reference to the latter portion of the section, that is if no statement has been made by the ratepayer and the assessor assesses him to the Separate School, he may make the provisions of Section 279 to show that he is a supporter of the Public Schools or vice versa.

"It would have been the easiest thing in the world had the legislature intended it to make a provision that Roman

Catholics should be assessed to the Separate Schools and Protestants to the Public Schools or vice versa. It could have been expressed in a few words and I think were I to give effect to the appellant's contention I should be simply legislating, and legislating in a most drastic manner; I can conceive numberless reasons why the ratepayer should be entitled to choose the support of his school quite independently of any religious connection, distance, teaching and so on.

"The use of the word 'Supporter' in the section confirms me in my opinion . . . the appeal will be dismissed with costs."

14th Sept., 1911,
(Judge McLorg.)

Moosomin, Jan. 25, 1913.

A. H. BALL, ESQ.,
Deputy Minister of Education,
Regina.

Dear Sir:

In reply to your telephone enquiry re my refusal to place a man on the assessment roll of the Roman Catholic Separate School District at Lemberg, I report the facts as follows:

"A year ago last summer a man named Farley, who had come up that year from his home near Brighton, Ont., appealed to me from the decision of the Court of Revision refusing his application to be designated a Separate School supporter instead of a Public School supporter as he had been, if I remember rightly, for some years prior to that date, although during the former period he had been a non-resident. Through some misunderstanding of the parties themselves, no counsel appeared for either of them and I went on without counsel.

"The facts as given by Farley himself were that his mother was a Methodist, that his father did not belong to any church, but if he went anywhere he went to the Methodist Church. He said he believed, or his mother had told him, that he himself (Farley) had never been baptized and in Ontario he belonged to no church. After coming to Lemberg, Farley got to know the parish priest very well,

who had visited him while he was laid up with a broken arm. I think this priest's house was either on a part of Farley's farm or at any rate in very close proximity to Farley's dwelling place. Farley said he contributed to the support of the Catholic Church and gave no support to any other church. He did not say how much this was. He was not prepared to swear that he was a Roman Catholic or that his parents were. Under these circumstances and facts I refused to have him changed from a Public School supporter to a Separate School supporter. My reasons for so holding were given at the time (I gave no written judgment), and were based on my interpretation of Sections 42 and 43 of the School Act and also Sections 88 to 94 of the School Assessment Act and subsection (4) of Section 293 of the Municipal Act. Section 42 says that the petition for a Separate School district shall be signed by three resident ratepayers of the *religious faith* indicated in the name of the proposed district. Then they must be Roman Catholics. Then Section 43 fixes the qualifications of those qualified to vote for or against the Separate School to be ratepayers of the same *religious faith*, namely, there, Roman Catholics. I held that these words '*same religious faith*' meant bona fide members of the Roman Catholic Church, i.e., members of that Church by the usual method of confirmation and performance of religious duties, or children of Roman Catholic parents, or if as a former Protestant they had been properly received and adopted by the Roman Catholic church as a member of their church according to their rites, which among other things, in Farley's case, would require baptism and an attendance on mass and confession. None of these things Farley had done, nor was he prepared to do them, and I held that he was not a bona fide member of the Roman Catholic Church, would have had no right to petition or vote for a Separate School and therefore was not entitled to be placed on the list of Separate School supporters at that time. I told him that if he became a member (bona fide) of the Roman Catholic Church I would place him on the Separate School list, but not till then. He appealed again last year, but was no nearer being a Roman Catholic then than the year before.

"When this Lemberg case was being heard last, Mr. Farley was present and spoke to Hector McDonald about

the matter. 'Well,' Hector said, 'did you go to confession and take communion last Easter?' Farley said, 'No.' 'Well,' he said, 'you are no Catholic.' Farley's whole ground for the appeal was that he made occasional contributions to the Roman Catholic funds. If I had agreed to this qualification, every Protestant would have contributed a quarter (25c.) to the Roman Catholic funds and become a Separate School supporter to get out of the rather heavy Public School rates of that place."

Yours truly,
(Sgd.) A. GRAY FARRELL.

DECISION OF THE SUPREME COURT OF SASKATCHEWAN
EN BANC IN THE BARTZ CASE.

JUDGMENT OF CHIEF JUSTICE

Following is the judgment (in part) of Chief Justice Sir Frederick Haultain in the Bartz case. The judgment of the Chief Justice is concurred in by Hon. Mr. Justice Brown, Hon. Mr. Justice Elwood and Hon. Mr. Justice McKay:

"The first question to be considered is whether the provisions of the several acts above cited leave it optional with a ratepayer of the same religious faith as the minority of ratepayers establishing a Separate School to support that school or not.

"It was argued on behalf of the appellant that Section 39 of the School Act does not give a majority of the minority in any district the power to compel the minority to support a Separate School. The foundation of the right to separate, he says, is conscientious objection or religious scruple, and the individual conscience must be the final arbiter.

"It was also argued that 'the ratepayer establishing such Separate School' mentioned in Section 39 means the ratepayers voting for the erection of the Separate School district under Section 41, and does not include the ratepayers voting against it.

"We are fortunately not left to decide this point on the bare language of Section 39. The various provisions of the City Act, the School Act and the School Assessment Act as amended by Section 11 of Chapter 25 of the Statutes of 1915, relating to assessment and taxation for school pur-

poses, all, in my opinion, point conclusively to an intention of the legislature to establish majority rule within a minority, either Protestant or Roman Catholic, establishing a Separate School. Sections 41, 44 and 45 of the School Assessment Act, and Sections 390, 394 and 409 (4) of the City Act all seem to me to impose an unqualified liability to taxation for Separate School purposes upon every ratepayer in the municipality who is of the same religious faith as the ratepayers who established such Separate School. Section 394 of the City Act gives a right to appeal to the Court of Revision to any ratepayer 'who thinks that any person who should be assessed as a Public School supporter has been assessed as a Separate School supporter or vice versa.' Section 409 (4) of the same Act provides that the assessor 'shall accept the statement of any ratepayer or a statement made on behalf of any ratepayer by his written authority that he is a supporter of Public Schools or of Separate Schools as the case may be, and such statement shall be sufficient prima facie evidence for entering opposite the name of such person on the assessment roll the letters PSS or SSS, as the case may be, and in the absence of any such statement the assessor shall make such entries in accordance with his belief.'

"Section 394 first appeared on our statute book in its present form in the City Act of 1908, the right of appeal with regard to assessment for school purposes being then given specifically for the first time. That statute also provided for the first time for a column in the assessment roll to indicate whether a ratepayer was a Public or Separate School supporter, and Subsection (4) of Section 409 of the present (1915) City Act was first enacted as Subsection (4) of Section 301 of the City Act of 1908. Whatever argument might have been founded on the school and municipal legislation prior to 1908, it seems to me to be quite clear that the legislation of that year, as re-enacted in 1915, and of 1915, made the support of a Separate School incumbent upon every ratepayer belonging to the minority on whose behalf the Separate School was established.

"I, therefore, concur with the decision of the Local Government Board on this point.

"The next point raised by the appellant is stated in his notice of appeal as follows:

"Further, and in the alternative, if, in the opinion of this honourable Court, the said judgment (i.e., the judgment of the Local Government Board) is a correct interpretation of such statutes, and such statutes are within the competence of the Saskatchewan Legislature under the provisions of 'The Saskatchewan Act,' being 4-5, Edward VII, chapter 42, and particularly Section 17 thereof, then it is submitted that such last mentioned Act, in so far as it purports to give to the Legislature of the Province of Saskatchewan jurisdiction to enact legislation depriving any ratepayer whose lands are situated within a Public School district within which a Separate School has been established of the right to support with his taxes such Public School regardless of what his religious faith may be, or, in so far as it purports to place it beyond the competence of the Saskatchewan Legislature to enact laws requiring all ratepayers to be taxed for the support of the Public School, is beyond the competence of the Parliament of the Dominion of Canada under the provisions of the Imperial Statutes and Order-in-Council by which that portion of the Dominion of Canada, now comprising the Province of Saskatchewan, was admitted into and became a part of the Dominion of Canada on July 15, 1870; namely, the British North America Act, 1867, 30 Victoria, chapter 3, Rupert's Land Act, 1867, 31-32 Victoria, chapter 105, and the Imperial Order-in-Council passed in pursuance thereof, and dated the 23rd day of June, 1870, admitting Rupert's Land and the North-West Territory into the union; or under the provisions of the British North America Act, 1871.'

"The question whether the statutes under consideration are within the competence of the Saskatchewan Legislature under Section 17 of the Saskatchewan Act (45 Edward VII, chapter 42) was not argued.

"Section 17 enacts that Section 93 of the British North America Act, 1867, shall apply to the Province with certain modifications. (Section 17 is here inserted.)

"As the point was not pressed, it will be necessary for me to do little more than to express the opinion that nothing in any of the provincial statutes under consideration prejudicially affects any right or privilege with respect to Separate Schools which any class of persons had at the date of the passing of the Saskatchewan Act, the 20th July, 1905, under

the terms of the Ordinances mentioned therein. The School Ordinance, No. 29, of 1901, Sections 41-45, is identical in language with Sections 39, 40, 41, 42 and 44 of the School Act of 1915, with the exception that Subsection (2) of Section 45 of the School Ordinance is taken out of the School Act and re-enacted in the School Assessment Act (Section 45, Subsection (2)).

"The sources of the rights or privileges with respect to Separate Schools in Saskatchewan are the Ordinances above mentioned, and the class of persons to which such rights or privileges are reserved is the minority of the ratepayers, whether Protestant or Roman Catholic, within any Public School district. The right or privilege is to establish a Separate School and to be liable only to taxation in respect thereof. The right to pay taxes to the Public School instead of to the Separate School is not a right or privilege reserved to the minority. Even if that right existed on the 20th July, 1905, the taking of it away by later provincial legislation is not an invasion of any of the rights or privileges reserved by the Saskatchewan Act. It might have been a right enjoyed at the time by individual members of the minority, but they are not a class of persons within the meaning of the Saskatchewan Act or Section 93 of the British North America Act, 1867. (Board of Trustees of the Roman Catholic Separate Schools of the City of Ottawa vs. Mackell (1916) 33 L.T. 37).

"The further question raised under this branch of the case is that Section 17 of the Saskatchewan Act is beyond the powers of the Parliament of Canada.

"This raises an interesting question as to the power of Parliament under the British North America Act, 1871, to establish a province with more restricted or different powers from those granted to a province under the original Act of 1867. As Mr. Justice Clement in the last edition of his work on the Canadian Constitution says, this is perhaps a debatable question so far as the restrictive clauses in the Alberta and Saskatchewan Acts are concerned. But, in my opinion, it is not necessary for us to consider this question, because if the appellant's contention is correct, he has no basis upon which to found any objection to the legislation now under review.

"What right or privilege with regard to denominational

schools did any class of persons have by law in the area included in this Province on the 15th July, 1870? At that date there was no law or regulation or ordinance relating to education in force in the North-West Territories. There were, therefore, no rights or privileges with respect to denominational schools existing by law at the union which could be prejudicially affected by subsequent provincial legislation. On this assumption then, the Province started out with an absolutely free hand with regard to education, and the legislation under review is clearly within its powers and cannot be attacked in the Courts under Subsection (1) of Section 93.

"This conclusion seemed to be supported by the opinion expressed by the Judicial Committee of the Privy Council in the *City of Winnipeg vs. Barrett* (1892, A.C. 445).

"In the Manitoba Act (33 Victoria, Chapter 3, Canada) the following subsection was substituted for Subsection (1) of Section 93 of the British North America Act, 1867:

"(1) Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law or practice in the Province at the union."

"The decision turned upon the words 'or practice,' which do not occur in the British North America Act, 1867, or in the Saskatchewan Act, but in the course of their judgment their Lordships said, at page 453:

"What, then, was the state of things when Manitoba was admitted to the union? On this point there is no dispute. It is agreed that there was no law or regulation or ordinance with respect to education in force at the time. There were, therefore, no rights or privileges with respect to denominational schools existing by law."

"As I have already pointed out, there was a similar 'state of things' in this portion of the Dominion on the 15th July, 1870.

"The appellant, then, is forced into one or other of two positions. If he relies on the British North America Act, 1867, he is confronted with the provincial legislation of 1908 and 1915, which is clearly within the powers of the Provincial Legislature, and under which a system of Separate Schools has been established by the Legislature of the Province. If he relies on the Saskatchewan Act, he is confronted with

the same legislation, which, in my opinion, deliberately adopts the system of Separate Schools and Separate School rights which was imposed upon the Province by the Saskatchewan Act. In either case, what has been deliberately given cannot be taken away; at least, if it is taken away, the remedial action of the Governor-General in Council and the Parliament of Canada may be invoked by a Protestant or Roman Catholic minority whose rights or privileges under the Provincial Statutes of 1915 have been affected.

"If the Saskatchewan Act is within the powers of Parliament, a recourse to the Courts will also be open to any class of persons whose right or privilege with respect to Separate Schools as provided for in Section 1 may be prejudicially affected.

"For the reasons above stated, I think that the appeal should be dismissed with costs.

"Given at Regina this 6th day of January, 1917."

APPENDIX V

I

ONTARIO

13. (1) (a) Every Public School shall be opened with the reading of the Scriptures and the repeating of the Lord's Prayer, and shall be closed with the Lord's Prayer or the prayer authorized by the Department; but no pupil shall be required to take part in any religious exercises objected to by his parent or guardian.

(b) (i) In schools without suitable waiting-rooms or other similar accommodation, if the parent or guardian demands the withdrawal of a pupil while the religious exercises are being held, such demand shall be complied with, and the reading of the Scriptures shall be deferred in inclement weather until the closing.

(ii) To secure the observance of this regulation, the teacher, before commencing a religious exercise, shall allow the necessary interval to elapse, during which the children or wards of those who have signified their objection thereto may retire.

(c) If the parent or guardian objects to his child or ward taking part in the religious exercises, but directs that he shall remain in the schoolroom during these religious exercises, the teacher shall permit him to do so, provided that he maintains decorous behaviour during the exercises.

(d) If, in virtue of his right to be absent from the religious services, any pupil does not enter the schoolroom in the morning till the close of the time allowed for religious exercises, such absence shall not be treated as an offence against the rules of the school.

(e) When a teacher claims to have conscientious scruples in regard to opening or closing school as herein prescribed, he shall notify the Board to that effect in writing; and it shall then be the duty of the Board to make such provisions as it may deem expedient for the carrying out of the requirements of (1) (a) above.

(2) (a) The Scriptures shall be read daily and systematically. The parts to be read may be taken from the book of

selections adopted by the Department for that purpose, or from the Bible, or from the list of the Selected Scripture Readings of the International Sunday School Association, or from any other list approved by the Minister, as the Board by resolution may direct.

(b) The Board may also order by resolution the reading of such parts by both pupils and teachers daily at the closing of the school, and, in addition, the repeating of the Ten Commandments at least once a week, and the memorization of passages selected by the Principal from the Bible.

(c) If the Board does not pass the resolution provided for in (a) above, the teacher shall make the selection himself after duly notifying the Board of his intention, but such selection shall be subject to revision by the Board at any time.

(3) (a) (i) A clergyman of any denomination shall have the right, and it shall be lawful for the Board to allow him, to give religious instruction to the pupils of his own denomination, in each schoolhouse, at least once a week, before the hour of opening the school in the morning or after the hour of closing the school in the afternoon as the Board may determine.

(ii) Under the same conditions, a clergyman, selected by the clergymen of any number of denominations, shall also have the right to give religious instruction to the pupils belonging to such denominations.

(b) If the clergymen of more than one denomination apply to give religious instruction in the same schoolhouse where the number of classrooms is not sufficient for all at the same time, the Board shall decide on what day of the week a classroom shall be at the disposal of each, at the time above stated.

(4) Emblems of a denominational character shall not be exhibited in a Public School during regular school hours.

II

NEW BRUNSWICK

"REGULATION 23—Duties of Teachers: It shall be the duty of each and every teacher:

(1) To maintain a deportment becoming his position as an educator of the young; and to strive diligently to have

exemplified in the intercourse and conduct of the pupils throughout the School, the principles of Christian morality. To this end it shall be his duty to give instruction to the School, as occasion may require, concerning such moral actions and habits as the following:

Love and Hatred	Justice
Obedience, willing and forced.	Self-Control
Truth and falsehood, dissimulation	Contentment.
Selfishness and Self-denial	Industry and Idleness.
Gentleness and Cruelty	Respect for the Aged.
Courtesy	Self-conceit.
Cleanliness	Destructiveness
Loyalty and love of Country	Tale-telling, when right and when wrong
Generosity and Covetousness	Forbearance and Sympathy due to misfortune and deformity.
Order and Punctuality	Charity, especially towards those who differ from us in race, creed or colour.
Perseverance.	
Forgiveness of Injury	
Patience	

(2) While employed in the discharge of School duties not to make use of any religious catechism, nor to interfere, or permit interference on the part of others, with the religious tenets of any pupil.

(3) By familiar lessons to inform his pupils of the general conditions of Health, how it may be retained and ill-health avoided. To maintain a regular supervision of the pupils in the playground, to repress the use of improper language, and have a care that games are honourably played; and generally to have a care out of School over the deportment of the pupils while absent from their homes."

APPENDIX VI

ONTARIO BOARD OF EDUCATION

ROMAN CATHOLIC SEPARATE SCHOOLS AND ENGLISH-FRENCH PUBLIC AND SEPARATE SCHOOLS

CIRCULAR OF INSTRUCTIONS

(For the School Year, September to June, 1912-1913.)

PUBLIC AND ROMAN CATHOLIC SEPARATE SCHOOLS

1. (1) There are only two classes of Primary Schools in Ontario—Public Schools and Separate Schools; but, for convenience of reference, the term English-French is applied to those schools of each class in which French is the language of instruction and communication as limited in 3 (1) below, or is a subject of study in Forms I-IV as limited in 4 below.

(2) As far as practicable, before the close of the school year of 1912-13, the status of all schools attended by French-speaking pupils shall be decided in accordance with the definition in (1) above.

2. The Regulations and Courses of Study prescribed for the Public Schools, which are not inconsistent with the provisions of this circular, shall hereafter be in force in the Separate Schools—English and English-French—with the following modifications: The provisions for religious instruction and exercises in Public Schools shall not apply to Separate Schools and Separate School Boards may substitute the Canadian Catholic Readers for the Ontario Public School Readers.

ENGLISH-FRENCH PUBLIC AND ROMAN CATHOLIC SEPARATE SCHOOLS

3. Subject, in the case of each school, to the direction and approval of the Supervising Inspector, the following modifications shall also be made in the course of study of the Public and Separate Schools:

The Use of French for Instruction and Communication

(1) Where necessary in the case of French-speaking pupils, French may be used as the language of instruction and communication; but such use of French shall not be con-

tinued beyond Form I, excepting during the school year of 1912-13, when it may also be used as the language of instruction and communication in the case of pupils beyond Form I who, owing to previous defective training, are unable to speak and understand the English language.

Special Course in English for French-Speaking Pupils.

(2) In the case of French-speaking pupils who are unable to speak and understand the English language well enough for the purposes of instruction and communication, the following provision is hereby made:

(a) As soon as the pupil enters the school he shall begin the study and the use of the English language.

NOTE: Before the schools open in September, 1912, a Manual of Method for use in teaching English to French-speaking pupils will be distributed amongst the schools by the Department of Education.

(b) As soon as the pupil has acquired sufficient facility in the use of the English language he shall take up in that language the course of study as prescribed for the Public and Separate Schools.

French as a Subject of Study in Public and Separate Schools

4. For the school year of 1912-13, in the schools where French has hitherto been a subject of study, the Public or Separate School Board, as the case may be, may provide, under the following conditions, for instruction in French Reading, Grammar and Composition in Forms I to IV (see also provision for Form V in Public School Regulation 14 (5)) in addition to the subjects prescribed for the Public and Separate Schools:

(1) Such instruction in French may be taken only by pupils whose parents or guardians direct that they shall do so.

(2) Such instruction in French shall not interfere with the adequacy of the instruction in English, and the provision for such instruction in French in the time-table of the school shall be subject to the approval and direction of the Supervising Inspector and shall not in any day exceed one hour in each classroom.

(3) Where, as permitted above for the school year of 1912-1913 French is a subject of study in a Public or Separate School, the textbooks in use during the school

year of 1911-1912, in French Reading, Grammar and Composition shall remain authorized for use during the School year of 1912-1913.

Inspection of English-French Schools

5. For the purpose of inspection the English-French schools shall be organized into three divisions, each division being under the charge of a Supervising Inspector and an Inspector.

6. (1) In conducting the work of inspection the supervising Inspector and the Inspector of a division shall alternately visit each school therein.

(2) Each Divisional Inspector shall pay at least 220 half-day visits during the year in accordance with the provisions of Public School Regulation 20 (2), and it shall be the duty of each Inspector to pay as many more visits than the minimum as the circumstances may demand.

7. Each two Divisional Inspectors shall reside at such centre or centres in their inspectorates as may be designated by the Minister.

8. Frequently during the year the two Divisional Inspectors shall meet together in order to discuss questions that may arise in their work and to standardize the system of inspection. For the same purposes all the Supervising Inspectors shall meet at such times and places as may be designated by the Minister.

9. (1) While each Divisional Inspector shall report upon the general condition of all the classes, the Supervising Inspector shall be held responsible chiefly for the efficiency of the instruction in English, and the other Inspector for the efficiency of the instruction in French.

(2) The Supervising Inspector shall have the sole control of the organization of each school so far as is provided in 3 and 4 (2), above.

10. If either of the Divisional Inspectors finds that any Regulation or Instruction of the Department or the organization of the school as approved and directed by the Supervising Inspector is not being properly carried out, he shall have the power to order the necessary amendment to take effect as soon as he may deem it expedient, reporting specially on such cases to the Minister from time to time as the urgency and the character of the case may demand.

11. Each Divisional Inspector shall forward a copy of his ordinary inspectional report on the prescribed official form to the Minister and to the Secretary of the School Board within one week after the visit.

12. Next September, as soon as the principal, or teacher, of a school has made out the time-table thereof, he or she shall send a certified copy to the Supervising Inspector of the division to which the school belongs, for approval by him until his visit of inspection. At the same time the principal, or teacher, shall forward to the Supervising Inspector a statement showing the number in attendance in each Form of English and French-speaking pupils respectively.

NOTE: Before next September each School Board and each principal, or teacher, will be notified by the Minister of the division to which the school belongs and the names of the Divisional Inspectors.

Teacher's Certificates for English-French Schools.

13. (1) After June, 1912, no teacher shall be granted a certificate to teach in English-French schools who does not possess a knowledge of the English language sufficient to teach the Public School Course.

(2) After June, 1912, no teacher shall remain in office or be appointed in any of said schools who does not possess a knowledge of the English language sufficient to teach the Public School Course of study.

Legislative Grants to English-French Schools.

14. The Legislative Grants to the English-French schools shall be made on the same conditions as are the grants to the other Public and Separate Schools, but no grant shall be made to any English-French school which does not provide teachers with the qualification specified in 13 (1) above.

15. On due application from the School Board and on the report of all the Divisional Inspectors, an English-French school which is unable to provide the salary necessary to secure a teacher with the aforesaid qualifications shall receive a special grant in order to assist it in doing so.

DEPARTMENT OF EDUCATION,

June, 1912.



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